Supreme Court, U.S.
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NO

IN THE SUPREME COURT OF THE UNITED STATES

PATRICK JAY CONELY
PETITIONER

v.

MICHIGAN,
JENNIFER M. GRANHOLM. GOVERNOR OF THE STATE OF MICHIGAN/MICHIGAN,
MICHAEL A. COX, ATTORNEY GENERAL FOR THE STATE OF MICHIGAN/MICHIGAN
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO REVIEW THE ORDER OF THE MICHIGAN SUPREME COURT DATED JANUARY 30, 2006 ON REHEARING

PETITION FOR WRIT OF CERTIORARI
with Appendix

Patrick Jay Conely
Citizen of the United States
in propia persona
c/o 4961 Walsh Drive
P.O. BOX 361
Brighton, Michigan state, in the United States [48116]
Petitioner
(810) 227-1298

To the Honorable Justices of the Supreme Court of the United States.

Whereas in this petition to the Supreme Court of the United States Patrick Jay Conely, natural Citizen of the United States, Petitioner in this cause of action respectfully presents his petition for writ of certiorari, and submit the following reasons why his prayer should be granted:

Patrick Jay Conely, Petitioner, Citizen with his private domicile in the sovereign United States Pleads the Constitution of the United States in Bar of the action, notwithstanding which the court and the justices of the United States Supreme Court gives judgment against him in the particular matters now before the Court of the Union of the United States saying "the lawful demand of one's rights" jus prosequendi in judicio quod alicui debetur.

This is to show there can be "a case in law and equity". Arising under the Constitution to which the judicial power does extend arising under section 8 of Article 1 of the Constitution of the United States and under section 5 of the Fourteenth Amendment is established [p]ursant to the affirmative powers of congress.

QUESTIONS PRESENTED

I - Has the State of Michigan meet the burden of proof to control the private property of Patrick Jay Conely?

II – Is Patrick Jay Conely grandfathered in his right to operate a salvage operation?

III – Are the Statutes of the State of Michigan as most defined in Count I, II and III of the criminal complaint taken in the name of The people of the State of Michigan, the State of Michigan ex-post facto to the Constitution of the United States?

IV Were Patrick Jay Conely's Fifth and Fourteenth Amendment Rights violated when The People of the State of Michigan, the State of Michigan failed to apprise Mr. Conely of the statutes defined in Counts I, II and III prior to filing the State of Michigan criminal complaint No. 01-5883 SM.

PARTIES TO THE PROCEEDINGS

Petitioner

This proceeding in the Supreme Court of the United States involves a Petition for Writ of Certiorari to the Michigan Supreme Court.

The party is the Petitioner, Patrick Jay Conely, c/o 4961 Walsh Drive, Brighton, P.O. BOX 361, Michigan, in the United States [48116] (810) 227-1298. Petitioner, Patrick Jay Conely in propia persona.

Under Rule 29 (4) the Solicitor General of the United States of America is served a copy of the petition for Writ of Certiorari, at the Department of Justice, 10th and Constitutional Ave., N.W., Washington in the city of Washington, in the district of Columbia the seat of the government of the United States.

The questions raised by the petitioner, involve questions of the constitutionally and application of the Statutes of the State of Michigan, in the State, in this State referring to The State of Michigan Governmental actions in Michigan and the Constitution and the laws of the United States, Articles and Amendments.

RESPONDENTS

The State of Michigan/Michigan is named as the respondent in this action before the Supreme Court of the United States as the moving party in the action in the State of Michigan 53rd. District Court.

The State of Michigan/ Michigan has a regular place of business at the ROMNEY BUILDING, 111 SOUTH CAPITAL AVENUE, LANSING, MICHIGAN.

The Governor of the State of Michigan/Michigan, Jennifer M. Granholn has a regular place of business at the ROMNEY BUILDING, 111 SOUTH CAPITAL AVENUE, LANSING, MICHIGAN.

Respondent, Michael A. Cox, Attorney General for the State of Michigan/ Michigan is the Chief Prosecuting Attorney for the State of Michigan/Michigan, in the State, in this State. Michael A. Cox has a regular place of business at the Law building, 525 Ottawa, Lansing, Michigan state/ State of Michigan.

CONSTITUTIONAL PROVISIONS STATUTES, RULES AND TREATIES INVOLVED

The constitution of the United States, as amended of the original Constitution of 1776, fifth and fourteenth amendment of the Bill of Rights of the Congress of the United: States of Article the fifth; the Fourteenth Amendment to the Constitution of the United States for the original State of the Union of the United States; Article III § 2 of the Constitution of the United States; Article IV § 1 of the Constitution of the United States; 41 Cong. Rec. 2752; the Buck-Act 4 U.S.C. §§ 105-110.

PROCEDURAL HISTORY OF THE PROCEEDING IN THE STATE OF MICHIGAN COURTS

Procedural history of the proceeding of the State of Michigan criminal prosecution of Patrick Jay Conely, Citizen,

Petitioner can be review pursuant to **Rule 14** in the **Appendix A through E** from the proceeding in the State of Michigan 53rd District Court to the appeal in the Michigan/State of Michigan Supreme Court on Denial of Rehearing.

This petition for writ of certiorari is filed timely within 90 days of the Order of the Michigan Supreme Count on rehearing dated January 30, 2006.

This petition is filed in good faith by the petitioner and requests procedural due process pursuant the Fifth and Fourteenth Amendment of the deprivation of liberty and property as most respectfully presented in his writ of certiorari

Petitioner request this court review the Addendum - A - of the Essential Elements Rule and Article IV, § , cl1 of the Constitution of the United States.

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Count I - - - SOLID WASTE - - - DISPOSAL OF REFUSE AT NON-LICENSED FACILITY did dispose of refuse at a place other that a disposal area licensed under the Solid Waste Management Part; contrary to M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (1), [324.115121], MISDEMEANOR: $1,000.00 fine (see M.C.L. 324.11549) 2

Count II - - - SOLID WASTE - - -
ESTABLISHING A DISPOSAL AREA
WITHOUT A PERMIT did establish a
disposal area without first obtaining a
construction permit from Department of
Natural Resources; contrary to
M.C.L. 324.11509 (1); M.S.A. 11509 (1),
[324.115091], MISDEMEANOR:
$1,000.00 fine [see M.C.L. 324.11549 2

Count III - - - SOLID WASTE - - -
OPERATING DISPOSAL AREA
WITHOUT LICENSE, did conduct,
manage, maintain, or operate a disposal
area without having a license from
the Department of Natural Resources;
contrary to M.C.L. 324.11512 (1);
M.S.A. 13A. 11512 (2),[324.115122]
MISDEMEANOR: $1,000.00 fine
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Addendum- A-

Essential Evidence Rule

Patrick Jay Conely, Petitioner, natural Citizen of the United States respectfully petitions the Supreme Court of the United States for Writ of Certiorari to the Michigan Supreme Court. Rehearing Order Denied Entered January 30, 2006.

OPINION BELOW

The opinion of the Michigan Supreme Court on rehearing to the petitioners petition see **Appendix – A.**

The opinion of the State of Michigan Supreme Court to the petition for hearing of the petitioners criminal conviction reversed in the State of Michigan Court of Appeals on rehearing appears in the **Appendix – B.**

JURISDICTION

The date on which the Michigan Supreme Court decided my case on rehearing was January 30, 2006. **Appendix – A** .

A timely petition for hearing was denied by the Michigan Supreme Court on the 30th of January 2006.

The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1257 (a) of 28 U.S.C. § 1.

Patrick Jay Conely, Petitioner, sovereign with his private domicile in the sovereign United States pleads the Constitution of the United States in Bar of the action, notwithstanding which the court and the Justices of the United States Supreme Court gives judgment against him in the particular matters now before the Court of the Union of the

United States saying "the lawful demand of one's rights" jus prosequendi in judicio quod alicui debetur.

Pursuant **41 Cong.Rec. 2752.** The bill was intended to create "the opportunity to settle important questions of law, its "great purpose" being to secure the ultimate decision of the court of final resort on questions of law; Article III, §2.

STATEMENT OF CASE

This cause arose with The People of the State of Michigan The State of Michigan filed a criminal complaint in the State of Michigan 53rd District Court. **The criminal complaint appears in the Appendix — E.**

The State of Michigan alleges that PATRICK JAY CONELY has violated the laws (Statutes) as follows;

Count I - - - SOLID WASTE - - - DISPOSAL OF REFUSE AT NON-LICENSED FACILITY did dispose of refuse at a place other that a disposal area licensed under the Solid Waste Management Part; contrary to M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (1), [324.115121],MISDEMEANOR: $1,000.00 fine (see M.C.L. 324.11549).

Count II - - - SOLID WASTE - - - ESTABLISHING A DISPOSAL AREA WITHOUT A PERMIT did establish a disposal area without first obtaining a construction permit from Department of Natural Resources; contrary to M.C.L. 324.11509 (1); M.S.A. 11509 (1), [324.115091], MISDEMEANOR: $1,000.00 fine [see M.C.L. 324.11549]

Count III - - - SOLID WASTE - - - OPERATING DISPOSAL AREA WITHOUT LICENSE, did conduct,

manage, maintain, or operate a disposal area without having a license from the Department of Natural Resources; contrary to M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (2),[324.115122] MISDEMEANOR: $1,000.00 fine [see 324.11549]

Patrick Jay Conely, was arrested on a warrant out of the State of Michigan 53-B District Court. The warrant (attached appears in the **Appendix – E**), registration of action in the State of Michigan 53-B Judicial District Court Copy of Complaint, and copies of the State of Michigan Statutes that Patrick Jay Conely violated three misdemeanor charges.

This warrant failed to allege that this action occurred in the district of the State of Michigan, in the State, in this State, See the Buck Act Title 4 U.S.C. §§ 105-108; State enclaves. The Michigan Constitution for 1963 has no Boundaries and that Patrick Jay Conely is doing business with the several States of the United States of America under the Commerce Clause having the authority to regulate commerce. This Warrant further lacks the authority to act citing that the "Statute(s)" that Patrick Jay Conely violated are the Laws of the United States. Michigan state is a sovereign state of the original 50 Union of United States, and the State of Michigan the foreign United States of America. See The United States Government Manual at Page 354. Following a hearing, the court held that Patrick Jay Conely was guilty of Count I, II, and III of the charges filed by The People of the State of Michigan The State of Michigan.

Following a bench trial Patrick Jay Conely was found guilty of Counts I, II, and III three separate misdemeanors.

Patrick Jay Conely posted the $1,000.00 (dollar) appeal bond that stayed the order and judgement of the State of Michigan 53rd District Court pending final judgment of the Supreme Court of the United States.

Patrick Jay Conely's attorney, Douglas D. Cameron petitioned the Circuit Court for the County of Livingston to review the order and judgment of the 53rd District Court, the Circuit Court reversed the conviction, order and judgement of the State of Michigan 53rd District Court. **The order and judgement appears in the Appendix — D.**

The People of the State of Michigan, appellant petitioned the Court of appeals for the State of Michigan to reverse the judgement of the Circuit court for the County of Livingston, Patrick Jay Conely, appellee responded by and through his attorney, Douglas D. Cameron.

After several briefs being filed by the parties, the appellant and appellee the Court of Appeals for the State of Michigan reversed the judgement of the Circuit Court for the County of Livingston. **The order of the Court appears in the Appendix – C.**

Patrick Jay Conely, appellee/petitioner, petitioned the State of Michigan Supreme Court to review the order and

judgement of the Court of Appeals for the State of Michigan. The order and judgement appears in the **Appendix – C .**

Patrick Jay Conely, petitioner moving by and through his attorney, Douglas A McKinney petitioned the Michigan Supreme Court for rehearing. The petition to the Michigan Supreme Court was denied. The order and judgement appears in the **Appendix – A .**

Petitioner Patrick Jay Conely petitions this Supreme Court of the United States for Certiorari to the Michigan Supreme Court for review of the judgment of the Michigan Supreme Court and for Writ of Certiorari to the Michigan Supreme Court.

Petitioner, Patrick Jay Conely in his Petition to the Supreme Court of the United States raises several issues for the first time.

I - Has the State of Michigan meet the burden of proof to control the private property of Patrick Jay Conely?

The object of the law is for the protection of the people of the state of Michigan. Where there is ambiguity in criminal statute, doubts are resolved in favor of the defendant. See **Adamo Wrecking Co. vs. U. S., U.S. Mich. 1978, 98 S. Ct. 566, 434 U.S. 275, 54 L.Ed. 2d. 538 (1978).**

Patrick Jay Conely's operation of sorting garbage and collecting salvageable recyclable steel, copper, brass and

aluminum started his operation about 22 years prior to The People of the State of Michigan, The State of Michigan filed this criminal complaint. The Statutes in the criminal complaint in Counts I, II, and III were enacted in 1995. Ex-post facto to the Constitution of the United States.

Patrick Jay Conely, Petitioner, has an operation of recovering and salvaging and recycling of copper, brass, aluminum and steel from the collection of garbage that was established on or about 1980 Prior to 1980 Mr. Conely's father had conducted operations on this property also. See saving clause of the Michigan Constitution and the "grandfather clause."

This Criminal action by the State of Michigan restricts the control and operations of Patrick Jay Conely's use of this private property, (inverse condemnation) in the 53-B Judicial District Court, and has infringed upon Conely's personal property right under the Land-Grant by the Government of the United States. See **Griffin vs. United States, 168 F.2d. 457 (1948)**; The title to this land will remain in the name of the **United States. United States vs. Oregon, 295 U.S. 1 (1935); United States vs. Board of Commrs., 323 U.S. 804 (1944)** and this land is not subject to state taxation, **McGoon vs. Scales, 76 U.S. 23 (1870).**

The 53rd District Court of the State of Michigan is

incapable of declaring or determining Patrick Jay Conely's legal Rights Privileges and Immunities pursuant to Article IV § 2, Clause 1, Constitution, and that Article VI § 2, of the Supremacy Clause. This Citizen of the United States is only bound by the Laws and the Constitution for the United States. See Twenty-Fourth-Congress, Sess I, Chap. CCXXXIV. The Laws of the United States shall have the same force and effect within the State of Michigan, as elsewhere within the United States. **Pursuant to the acts of the Twenty-Fourth-Congress, Sess. I, Chapter XCIX section 4, Act of June 23, 1836, Ch. 121 - - - "And the said State of Michigan shall in no case and under no pretence whatsoever, impose any tax, assessment, or imposition of any description upon any land of the United States within its limits. Approved", June 15, 1836.**

Petitioner cannot be defined as a statutory "person" lumped together in statute with corporations or other fictitious entities. "Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts." **Yick Wo v. Hopkins, 118 U.S. 356,370 (1886).**

Petitioner's, Right`s, Privileges and Immunities are

preserved in Part 1 Short Title and Savings Clause as a Citizen of the United States of Public Acts 1994 - - No. 451. See **1 U.S.C. § 109, Federal Saving Statute; Hamm vs. CITY OF ROCK HILL ,379 U.S. 306, (1964).**

Public Act 1994 - - - No. 451, is vague and under the vagueness doctrine. Under this principle, a law which does not fairly inform a petitioner. Citizen of what is commanded or prohibited is unconstitutional as violative of due-process.

"AN ACT to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, water, and other natural resources of the state; to prescribe the power and duties of certain state and local agencies and provide remedies; to provide for certain charges, fees, and assessments; to prescribe penalties and remedies; to repeal certain parts of this act on a specific date; and to certain acts and parts of acts."

Petitioner argues that Counts II, and III are in violation of the **Double Jeopardy Clause** see **United States v. Dixon, 509 U.S. 688 (1993) see Grady v. Corbin, 495 U.S. 508 (1990).** The conviction on "inter alia" constitutional double jeopardy grounds barring prosecution of Counts II, and III; **Grady at 515-524, 521-522**. The Fifth Amendment prohibits

successive prosecutions for the same criminal actor, transactions under two criminal statutes elements are the same.

II – Is Patrick Jay Conely grandfathered in his right to operate a salvage operation?

Licensed owners and operators are generally defined as statutory "Persons" in MCL 257.40, to be corporations or their legal successors. This sovereign citizen cannot be defined as a statutory "person," lumped together in a statute with corporations or other fictitious entities. "Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts." ***Yick Wo V. Hopkins, 118 U.S. 356,370 (1886).***

"The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open the doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law and in

accordance with the Constitution. Among his rights are a refusal to incriminate himself and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights. On the other hand, the corporation is a creature of the State. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to ~~the~~ laws of the State and the limitations of its charter. Its powers are limited by law and the United States Constitution. It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation; ***Hale v. Henkel, 201 U.S. 43,75 (1906).***

In Hale vs. Henkel, the Supreme-Court said " the individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private-business in his own way. His power to contract is unlimited." Mr. Conely owes no such duty [to submit his books and papers for an examination] to the State; since they received nothing thereof, beyond the protection of their life and property. "These rights are such as they exist by the law of the land [Common-Law] long antecedent to the organization of the State, and can only be taken by due-process of law and in accordance with the Constitution. He owes nothing to the public so long as he does

not trespass upon their rights", **Hale vs. Henkel , 207 U.S. 43 at 47, (1905).**

The Supreme Court of the United States held in **Miller vs. Milwaukee , 272 U.S. 713 (1927)** that if a statute is part of an unlawful scheme to reach a prohibited result, ... "the statute must fail" This was again upheld in **Mc Callen vs. Massachusetts, 279 U.S. 620, 630 (1929).**

" Discrimination is an act of treating differently two persons or things under like circumstances"; Nat'l Life Insurance Co. vs. United-States, 277 U.S. 508,630 (1928).

As far back as 1886 the U.S. Supreme Court was concerned with the unjust and illegal discriminations which were running rampant. The Court frowned upon law administered with an " unequal hand."

> **" .... so as practically to make unjust and illegal discrimination between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the constitution". Yick Wo vs. Hopkins, supra at *118 U.S. 356 (1886).***

The Courts cannot be the exclusive territory of the legal "elite corps" but must be open to all the Sovereign People alike on an equal basis.

The fact that Patrick Jay Conely is not a Licensed

Transfer Facility does not give the People of the State of Michigan the right to charge Patrick Jay Conely with a crime when no crime(s) has been committed under (common law) the Constitution of the United States. The State of Michigan cannot stand alone in an action taken against a Citizen of the United States without a damaged Citizen see **Kalina v. Fletcher, 522 U.S. 118 (1997).** The 14th Amendment section one and five of the United States Constitution holds the States to this due process clause. Licenced or not the due process clause applies and shall be equal in an action at law.

In speaking of controlling Constitutional law as opposed to mere statutory law, Chief Justice Marshall held ....

"Those then, who Marshall said; controvert this principle, that the constitution is to be considered, in court as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution and see only the law".

"This doctrine would subvert the very foundation of all written ... constitutions"; **Marbury vs. Madison, 5 U.S. 137, 176 (1803).**

Patrick Jay Conely, Petitioner, claims sovereign immunity; "[T]he sovereign . . . cannot in any way be subject to the commands of another, for it is he who makes law". J. Eliot cited Baldus for the crux of the theory: Majesty is "a fulness of power subject to noe necessitie, limitted within no

rules of publicke Law," 1 J. Eliot, De Jure Maiestatis: or Political Treatise of Government 15, A. Grosart ed. 1882, and Baldus himself made the point in observing that no one is bound by his own statute as of necessity, see Commentary of Baldus on the statute Digna vox in Justinian's Code 1.14.4, Lectura super Codice folio 51b, Chapter De Legibus et constitutionibus, Venice ed. 1496, "nemo suo statuto ligatur necessitative".

III – Are the Statutes of the State of Michigan as most defined in Count I, II and III of the criminal complaint taken in the name of The people of the State of Michigan, the State of Michigan ex-post facto to the Constitution of the United States?

The "Statutes" M.C.L. 324.11512(1); M.S.A. 13A. 11512(1). 1324.11512, (see M.C.L. 324.11549) Count 1. , M.C.L. 324.11509(1); M.S.A. 13A.11509. 1324.1150911. (See M.C.L. 324.11549), Count 2. M.C.L. 32411512(2); M.S.A. 11502 (2) (see M.C.L. 324.115491) Count 3., for the State of Michigan are unconstitutional and lacks the Seal of the United States as law. Before laws shall take effect in the State of Michigan they shall be presented to the Article III Courts of the United States for judicial reviewed and clearance. **Lopez vs. County of Monterey, 525 U.S.266 (1999)** as laws of the Nation as condition of admission of the State of Michigan into the union of States by the Congress of the United States of

America under the equal footing clause of an act of the Congress of the United States of America. **28 U.S.C. § 1783**; **Thomas vs. Washington Gas Light Co., 448 U.S. 706 (1999).**

This rule, if not compelled by the Full Faith and Credit Clause itself, (see n. 18, infra), is surely required by **28 U.S.C. § 1738**, - - - **which provides that the Acts, records and judicial proceedings . . . [of any State]** shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of [the] State . . . from which they are taken. One purpose of the Full Faith and Credit Clause is to bring an end to litigation. As the Court noted in **Riley v. New York Trust Co., 315 U.S. 343, 348-349 (1942)** perhaps the major purpose of the Full Faith and Credit Clause is to act as a nationally unifying force; **Sherrer v. Sherrer, 334 U.S. 343, 355 (1948).**

This Act by its own is in violation of Article 4, § 24, of the Constitution of Michigan for 1963 embracing two or more definitions of "Acts" within one "Act". This "Act" is directed to the sovereign state, relating to the environment and the natural resources of the state, the sovereign state. To regulate the discharge of certain substance into the environment; that is defined in the "Act" that excludes building material. See M.C.L. § 324.14703.

To declare what shall constitute a crime. See **Metheny vs. Hamby, 835 F. 2d. 672 (1987); Daigle vs. United States, 76 F.3d. 376, (C.A. 6 Michigan 1996); Randall vs. United States, 325 U.S. 148, F. 2d. 234, 325 U.S. 885 (1945)** the State of Michigan shall define the crime within these particular **"Statutes"** under **Seal of the State of Michigan; 28 U.S.C. §1738; Thomas vs. Washington Gas Light Co. 448 U.S. 261 (1980).** The enacting clause of every law shall read: "Be it enacted by the Legislature of the State of Michigan," that is challenged, and how it shall be punished is an exercise of the sovereign power of the state; **Worcester vs. Georgia, 31 U.S. 515 (1832).**

In the Constitutional Construction and Interpretation, - - Principle of existing Law - - The Best and effect of many of the provisions of the Constitution are best ascertained by bearing in mind what the law was at the time the Constitution and Amendments thereof were adopted and ratified, **Ex parte, Wilson, 1885, 5 Ct. 935, 114 U.S. 422, 29 L.Ed. 89,** not as reaching out for new guaranties but as securing such as the law recognized, **Mattox vs. U.S., 15 S. Ct. 337, 156 U.S. 243, 30 L.Ed. 409, (1805).** The requirement of full faith and credit is to be read and interpreted in the light of well established principles of justice protected by the Constitutional provisions which it was never intended to modify or override; **Bigelow**

vs. Old Diminion Copper Min., etc., Co., 32 S.Ct. 641, 225 U.S. 111, 56 L. Ed.1009, (Mass, 1912).

In general - - - The Constitution, establishing a frame of government, declaring fundamental principles, and creating a national sovereignty, is not to be interpreted with the strictness of a code of laws or of a private contract; **Fairbanks v. U.S. , 21 S.Ct. 648, 181 U.S. 287, 45 L.ed. 709, (1901).** Provisions for the Protection of Life, Liberty, and Property - - - The provisions for the protection of life, liberty, and property are to be largely and liberally construed in the favor of the Citizen; **Dorman v. State, 34 Ala. 216, 283, (1850);** A life construction should be made in favor of persons charged with a crime. **Ex parte, Lange, 85 U.S. 163 , 18 Wall, 163, 21 l.Ed. 872, (1873).**

In **Sims v. Parke Davis & Co. , E.D. Mich. 334 Sup.774, (1971),** an action for civil damages may be inferred from a criminal statute even though that statute does not expressly authorize a civil damage suit. The plaintiff must first demonstrate that he (Mr. Conely) falls within this class of persons the criminal statutes are intended to protect. To declare what shall constitute a crime, and how it shall be punished, is an exercise of the sovereign power of the state; **People vs. Hanrahan , 42 N.W. 402, (1889).**

Where is the damaged party in this case? How did Mr.

Conely endanger the health, safety, of the general welfare or moral of the People of the State of Michigan? See **People v. Deutsch, 172 N.W. 2d. 392 , 19 Mich. App. 74, (1969).**

"It is a necessary requisite that every law should show on its face the authority by which it is adopted and promulgated and that it should clearly appear that it is intended by the legislative power that enacts it that it should take effect as a law;" **People v. Dettenthaler, 77 N.W. 450, 451, 118 Mich. 595 (1898) and cases cited.**

Public Act 1994 - - - No 451 was passed after Patrick Jay Conely established an operation salvaging metals. The unusable materials and garbage collected are disposed of at a State of Michigan Licensed Landfill. It should be noted that on several occasions the **D.E.Q.** has searched several Superior Sanitation truck loads at **ONYX landfill**. See **M.C.L. § 324.11548.** See **42 U.S.C. § 6946**, Recyclable Material and Rubbish – Salvaging – means the removal of reusable materials from solid waste, also see Waste Reduction Act **M.C.L. 324.14303.**

It should be noted that this action by the State of Michigan may be in violation of the Waste Reduction Act.

Patrick Jay Conely, Superior Sanitation d/b/a/ collect household garbage; **United States v. Bestfoods, 524 U.S. 51 (1998)** and are not handlers in the "operation" of hazardous

waste or the disposal of hazardous waste; operator pursuant to **42 U.S.C. § 9607(a)(2)**. In 1980, CERCLA was enacted in response to the serious environmental and health risks posed by industrial pollution; **Exxon Corp. v. Hunt, 475 U.S. 355, 358-359 (1986).**

Fact - - - Public Act 1994 - - - No. 452 is not Law of this Nation. This "Act" lacks the judicial clearance for a three judge court of the district of the United States for the district of Columbia. Therefore Public Act 1994 - - - No 451 is not Law of this Nation and Patrick Jay Conely, a Citizen of the United States cannot be held to this Public Act 1994 - - - N. 452 of the State of Michigan; non State or Federal enclaves.

In **Thomas v. Washington Gas Light Co. 448 U.S. 261 (1980)**, the lead opinion was delivered by Mr. STEVENS,

1. United States Constitution, Art. IV, §1:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Title 28 U.S.C. §1738 provides, in part:

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory, or Possession from which they are taken.

Fact - - - Count I - - - SOLID WASTE - - - DISPOSAL OF REFUSE AT NON-LICENSED FACILITY did dispose of refuse at a place other that a disposal area licensed under the Solid Waste Management Part; contrary to M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (1), [324.115121]
MISDEMEANOR: $1,000.00 fine (see M.C.L. 324.11549)

Count II - - - SOLID WASTE - - - ESTABLISHING A DISPOSAL AREA WITHOUT A PERMIT did establish a disposal area without first obtaining a construction permit from Department of Natural Resources; contrary to M.C.L. 324.11509 (1); M.S.A. 11509 (1), [324.115091]
MISDEMEANOR: $1,000.00 fine [see M.C.L. 324.11549]

Count III - - - SOLID WASTE - OPERATING DISPOSAL AREA WITHOUT A PERMIT did conduct, manage, maintain, or operate a disposal area without having a license from the Department of Natural Resources; contrary to M.C.L. 324.11512 (2); M.S.A. 13A. 11512 (2); [324.115122]; MISDEMEANOR; $1,000.00 fine [see M.C.L. 324 11549]; lack the seal and the State of Michigan, and therefore are not in compliance with 28 U.S.C. § 1738.

The court(s) of the United States have held that a Citizen of the United States can only be held to the Laws of this Nation and the United States Constitution; **William Joe JOHNSON, Petitioner v. Harry S. AVERY, Commissioner, Department of Correction, and C. Murray**

Henderson, Warden, Tennessee State Penitentiary, Nashville, Tennessee, Respondents. Civ. No. 4170. United States District Court M.D. Tennessee, Nashville Division. Jan. 21, 1966. In this particular State of Michigan, criminal cause of action, Patrick Jay Conely a.k.a. PATRICK JAY CONELY is being held in detention and held to answer to the "Statute(s) of the Corporate State of Michigan that are not the Laws of this Nation or the United States Constitution.

Fact - - - On June 7, 2002, date of entry, the D.E.Q. the Michigan State Police and other officers, agents and/or employees of the State of Michigan entered the Private Property of Patrick Jay Conely and violated M.C.L. § 324.20135a. Access to property; action by court. [MSA §13A.20135a]. Trespass without authority is a trespass in violation of Patrick Jay Conely's Article IV, § 2, clause, Privileges and Immunities as a Citizen of the United States;

Camara vs. Municipal Court of the City and County of San Francisco 92 U.S. 523, (1967).

Theses Statutes are enforceable on persons, in the State, in this State; Such term, as defined does not include, any of the 50 union American States, but is defined as follows.

"... in this State; or in the State" means within the exterior limits of the State" States include [only] the District of Columbia, and the possessions of the United States." Title 4

U.S.C. § § 105-106; the BUCK ACT, taxation, and exemptions; subject to the jurisdiction of the United States.

Patrick Jay Conely, as a Citizen of the United States, is not a person and again the People of the State of Michigan and/or the State of Michigan has failed to show this Court that § 324.504 is the law of this state and the Law of this Nation by the Seal of the State with the judicial clearance from the district court of the United States for the district of Columbia as required by **28 U.S.C. § 1738.** See **Thomas v. Washington Gas Light Company, 448 U.S. 261, (1980).** Patrick Jay Conely is not named within the Statutes of the State of Michigan.

Petitioner further argues that the Respondents lacks the authority to take actions without substantially advanced legitimate public interest[s] and legitimate public interest[s], without a showing that the respondents acted in protecting the environment, health and safety of its citizens and regulating the quality of the community of the advance for any such legitimate public purpose; **City of Monterey v. Del Monte Dunes at Monterey , 526 U.S. 687 (1999).**

This operation of collecting and salvaging usable recyclable material at the private property commonly known as 4961 Walsh Drive, Brighton, Michigan state in the United States has been in operation before Public Act 1994 - No 451 was enacted into the Statutes for the State of Michigan. This

Public Act of 1994 is an Ex-Post- facto Statute and is not enforceable on the private property at 4961 Walsh Drive and/or upon Patrick Jay Conely without the State of Michigan showing that his personal action is a direct cause of damage to the Citizen(s) of Michigan, in the United States under the common law.

The People of The State of Michigan failed to prove that Patrick Jay Conely intended to violate the State of Michigan statutes most defined in Counts I, II and III. See **Stapleton v. Commonwealth, 123 Va. 825, 96 S.E. 801; Shiflett v. Commonwealth, 143 Va. 609, 130 S.E. 777; Jefferson v. Commonwealth, 214 Va. 432, 201 S.E.2d 749.**

The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt. **In re Winship, 397 U.S. 358.**, the Court held for the first time that the Due Process Clause of the Fourteenth Amendment protects a defendant in a criminal case against conviction "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."**397 U.S. at 364**. In so holding, the Court emphasized that proof beyond a reasonable doubt has traditionally been regarded as **the decisive difference between criminal culpability and civil liability. Id. at 358-362. See Davis v. United States, 160 U.S. 469; Brinegar v. United States, 338**

U.S. 160, 174; Leland v. Oregon, 343 U.S. 790; 9 J. Wigmore, Evidence § 2495, pp. 307-308 (3d ed.1940). Cf. Woodby v. INS, 385 U.S. 276, 285. The standard of proof beyond a reasonable doubt, said the Court, plays a vital role in the American scheme of criminal procedure.

The constitutional standard recognized in the Winship case was expressly phrased as one that protects an accused against a conviction except on **"proof beyond a reasonable doubt. . . ."** In subsequent cases discussing the reasonable doubt standard, we have never departed from this definition of the rule, or from **[443 U.S. 316] the Winship understanding of the central purposes it serves. See, e.g., Ivan v. v. City of New York, 407 U.S. 203, 204; Lego v. Twomey, 404 U.S. 477, 486-487; Mullaney v. Wilbur, 421 U.S. 684; Patterson v. New York, 432 U.S. 197; Cool v. United States, 409 U.S. 100, 104.** In short, Winship presupposes as an essential of the due process guaranteed by the Fourteenth Amendment that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof - defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of the element of the offense. The Blockburger test.

The Winship doctrine requires more than simply a trial [443 U.S. 317] ritual. A doctrine establishing such a fundamental and substantive constitutional standard must also

require that the factfinder will rationally apply that standard to the facts in evidence. A "reasonable doubt," at a minimum, is one based upon "reason." Yet a properly instructed jury may occasionally convict even when it can be said that no rational trier of fact could find guilt beyond a reasonable doubt, and the same may be said of a trial judge sitting as a jury. In a federal trial, such an occurrence has traditionally been deemed to require reversal of the conviction. **Glasser v. United States, 315 U.S. 60, 80; Bronston v. United States, 409 U.S. 352. See also, e.g., Curley v. United States, 81 U.S.App.D.C. 389, 392-393, 160 F.2d 229, 232-233.** Under **Winship,** which established **[443 U.S. 318]** proof beyond a reasonable doubt as an essential part of the Fourteenth Amendment due process, it follows that, when such a conviction occurs in a state trial it cannot constitutionally stand.

IV Were Patrick Jay Conely's Fifth and Fourteenth Amendment Rights violated when The People of the State of Michigan, the State of Michigan failed to apprise Mr. Conely of the statutes defined in Counts I, II and III prior to filing the State of Michigan criminal complaint No. 01-5883 SM.

Patrick Jay Conely, Petitioner has an operation of recovering, salvaging and recycling of copper, brass, aluminum and steel from the collection of garbage which was established in 1980 Prior to 1980, Mr. Conely's father had conducted

operations on the property also; **City of New Orleans v. Dukes, 427 U.S. 297 (1976) at 297 also U.S. 300** ("had operated in the Vieux Carre for 20 or more years, and therefore qualified under the **"grandfather clause"**); **Adams v. Tanner, 244 U.S. 590 (1917) at 595 and the 14th Amendment.**

The liberty mentioned in the14th Amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out a successful conclusion, the purposes above mentioned.

Petitioner further argues that the Respondents lack the authority to take actions without substantially advanced legitimate public interest[s] and legitimate public interest[s] without a showing that the respondents acted in protecting the environment, the health and safety of its citizens and regulating the quality of the community of the advance for any such legitimate public purpose; **City of Monterey v. Del Monte Dunes at Monterey, 526 U.S. 687 (1999).**

The State of Michigan failed to apprise Patrick Jay

Conely of the changes in the Statutes as defined in the criminal complaint in counts I, II and III failing to afford Mr. Conely an opportunity to present objections in a judicial court of law prior to taking criminal action; **Henderson v. United States, 517 U.S. 654 (1996); also Mullane v. Centeral Hanover Bank & Trust Co., 339 U.S. 306 (1952) and Blackner v. United States, 284 U.S. 421 (1923).** See Fifth Amendment to the Constitution of the United States and the Bill of Rights and the Articles as the laws of this Nation.

REASONS FOR GRANTING

Patrick Jay Conely, Citizen & Petitioner, respectfully requests the justices of this Honorable court grant this writ of Certiorari to vindicate the Michigan conviction, in the name of The People of the State of Michigan, The State of Michigan.

Petitioner raised several violations of his liberties and Constitutional Rights, Privileges, Immunities and personal Liberties that are questions of law and the merits of the petitioners claims to be heard by this court of the United States.

Petitioner has throughout the proceeding in the courts of the State of Michigan has claimed his innocence. On appeal the Circuit Court for the County of Livingston reversed the conviction in the State of Michigan 53rd District Court.

During the proceeding in the State of Michigan 53rd District Court the People failed to prove that Patrick Jay Conely

intended to violate the State of Michigan Statutes most defined in Counts I, II and III.

On appeal to the State of Michigan Court of Appeals and under objections of the petitioner/ State defendant, the State of Michigan Court of Appeals reinstates the conviction of the 53rd District Court.

State defendant-petitioner appealed for reconsideration and the State of Michigan Court of Appeals and the State of Michigan Court of Appeals refused to reverse its decision.

Petitioner, Patrick Jay Conely, appealed to the State of Michigan Supreme Court that was rejected and an appeal for reconsideration was filed. The court saying "On order of the Court, the motion for reconsideration of this Court's order of August 30, 2005 is considered, and it is DENIED, because it does not appear that the order was entered erroneously."

The order of the Court in the opinion of the petitioner, the State of Michigan/Michigan Supreme Court has failed to settle the controversy of whether the State of Michigan has control of the petitioner private property and Patrick Jay Conely to enforcement of the statutes most defined in Count I, II and III of the State of Michigan's criminal complaint.

These statutes were in action in 1994 ex-post facto to the operations of the petitioner and therefore the petitioner should have been "grand fathered in the grandfather clause."

Petitioner requests this court consider whether the action by the People of the State of Michigan, the State of Michigan violated Petitioner's Fifth and Fourteenth Amendment rights by not apprising the petitioner, of the changes and the application of the State of Michigan statutes most defined in Counts I, II and III affording petitioner an opportunity to present objection to and be heard before a neutral judge.

Petitioner, further argues that these State of Michigan Statutes as most defined in Counts I, II, and III of The People of the State of Michigan criminal complaint only has authority within State of Michigan enclaves see the Buck Act 4 U.S.C. §108; see 4 U.S.C. §105 (a)(4); and "Acts or Omission"Double Jeopardy Clause, 5th Amendment without establishing a Constitutional and Statutory violation for exterritorial jurisdiction, in Michigan in the United States.

CONCLUSION

Certiorari jurisdiction is warranted to correct theses errors, clarify the law and purge an innocent Citizen of the wrongful application of the State of Michigan statutes on non enclaves of the State of Michigan without Boundaries, non federal enclaves, possessions and territories, in Michigan.

RELIEF REQUESTED

Wherefore, Patrick Jay Conely, petitioner prays that

this court of last result will hear his petition for writ of certiorari and pleads the Constitution of the United States in Bar of the action, notwithstanding the court and the justices of the United States Supreme Court gives judgment against him in the particular matters now before the court of the Union of the United States saying "the lawful demand of one's rights" jus prosequendi in judicio quod alicui debetur.

Petitioner further pleads for relief pursuant to **41 Cong.Rec. 2752.** "The bill was intended to create "the opportunity to settle important questions of law," its "great purpose" being "to secure the ultimate decision of the court of final resort on questions of law." Article III § 2 jurisdiction, cause of action under the Bill of Rights, Article I section 8, the third, sixth, seventh and the twelfth, the Constitution of the United States, Fourth, Fifth and Fourteenth Amendment as the laws of the United States; [p]ursant to the affirmative powers of congress. Questions of State Powers in non State enclaves.

The State of Michigan in error, failed to charge Patrick Jay Conely, Citizen under the common law(s) of Michigan, independent of any statutory provision on the subject, are in all cases in the discretion of the court, for the furtherance of justice.

Wherefore, Patrick Jay Conely, Citizen, Petitioner respectfully requests the Honorable Justices of this Supreme

Court of the United States grant this petition for writ of certiorari.

Dated: 4-21-06

Patrick Jay Conely

Patrick Jay Conely
c/o 4961 Walsh Road
P.O. Box 361
Brighton, Michigan [48116]
(810) 227-1298

BEFORE ME, the undersigned authority, Patrick Jay Conely, known by me (or satisfactorily proven) whose full appellation is subscribed by the foregoing instrument, personally appeared and acknowledged by me that he executed the same as his free act and deed for the purpose and considerations herein expressed and the capacity stated and the statements contained herein are true and correct by the best of his information, knowledge, and belief.

Subscribed and affirmed before me this 21 day of April, 2006.

IN WITNESS WHEREOF, I have set my hand and official seal:

Notary Public

January 20, 2012
My Commission Expire

TERRY YENNIOR
Notary Public - Michigan
Livingston County
My Commission Expires Jan 20, 2012
Acting in the County of Livingston

Appendix - A -
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Order

Michigan Supreme Court
Lansing, Michigan

January 30, 2006

128714
(43)

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

PATRICK JAY CONELY,
Defendant-Appellant.

Clifford W. Taylor
Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

SC: 128714
COA: 250576
Livingston CC: 02-013106-AR
53rdDC: 015883-SM

On order of the Court, the motion for reconsideration of this Court's order of August 30, 2005 is considered, and it so DENIED, because it does not appear that the order was entered erroneously.

t0823

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 30 , 2006

Corbin R. Davis
Clerk

10123

APPENDIX -B -

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Order

Michigan Supreme Court
Lansing, Michigan

August 30, 2005

128714
PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v
PATRICK JAY CONELY,
Defendant-Appellant.

Clifford W. Taylor
Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

SC: 128714
COA: 250576
Livingston CC: 02-013106-AR

53rd DC: 015883-SM

On order of the Court, the application for leave to appeal the February 8, 2005 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

t0823

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 30 , 2005

Corbin R. Davis
Clerk

APPENDIX - C -
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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PATRICK JAY CONELY,

Defendant-Appellee.

UNPUBLISHED
February 8, 2005

No. 250576
Livingston Circuit Court
LC No. 02-013106-AR

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.
MEMORANDUM.

Plaintiff appeals by leave granted the decision of the circuit court reversing defendant's district court convictions for violating the Solid Waste Management Act, MCL 324.11501 *el seq.*

We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 8, 2001, plaintiff filed a three-count complaint in 53rd District Court alleging that defendant disposed of waste in an area that was not licensed, he established a disposal area without obtaining a construction permit from the DNR, and he operated a disposal area without a license. After a bench trial, the district court found defendant guilty on all three counts. On appeal, the circuit court reversed the convictions, finding that there was no evidence presented concerning conditions on November 8, 2001, thus the evidence was insufficient to support the convictions.

In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe,* 440 Mich 508, 515; 489 NW2d 748 (1992). The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack,* 462 Mich 392, 400; 614 NW2d 78 (2000).

There was sufficient evidence to show that the violations existed. DEQ employees testified that they first went to the site on July 9, 2001, in response to a complaint forwarded by a local unit of government. They observed piles of solid waste in the center of the site, and salvage materials on the west and south sides of the site. When employees returned to the property in May 2002 to take environmental samples, the piles of solid waste were in similar locations and of similar size and some of the same material was in the same piles as before.

Defendant asserts that time is an element of the offense, and that plaintiff failed to present sufficient proof to establish that element, i.e., that the violations existed on the date

charged. However, a variance between the time charged and the proofs is not fatal unless time is of the essence. *People v Taylor,* 185 Mich 1, 7-8; 460 NW2d 582 (1990). There is no indication that time is of the essence, or a material element of the offenses charged: violations of the Solid Waste Management Act. *Id.* Plaintiff presented evidence that the violations existed at the time of the first inspection, and that those violations continued. There was no evidence that the violations ever abated, thus defendant was not prejudiced by a variation in time between the charge and the proofs. The circuit court therefore erred in reversing defendant's convictions.

Reversed and remanded for reinstatement of the convictions. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello

Appendix - C -
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Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI v PATRICK JAY CONELY

Docket No. 250576

LC No. 02-013106-AR

Joel P. Hoekstra
Presiding Judge
Mark J. Cavanagh
Stephen L. Borrello
Judges

The Court orders that the motion for reconsideration is DENIED.

The Court further orders that the motion for miscellaneous relief pursuant to MCR 7.216 is DENIED.

Presiding Judge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 2 3 2005 Sandra Schultz Mengel

Date Chief Clerk

APPENDIX -D -
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v Case. No. 02-13106 AR

PATRICK JAY CONELY,
Defendant.

TRUE COPY
DANIEL A. BURRESS
44th CIRCUIT COURT

OPINION and ORDER

Defendant/Appellant Conely was charged in a three count Complaint with violating provisions of the Solid Waste Management Act. Count I. alleged that Conely did

dispose of refuse at a place other than a disposal area licensed under the Solid Waste Management Act contrary to MCL 324.11512(1). Count II alleged that Conely established a disposal area without first obtaining a construction permit from the Department of Environmental Quality, contrary TO MCL 324,11509(1). Count III alleged that Conely did conduct, manage, maintain, or operate a disposal area without having- a license from the Department of EnvironmentalQuality contrary to MCL 324.11512(2). The complaint alleged that all three of these violations occurred on November 8, 2001.

Conely waived his right to a jury trial and a bench trial was held on June 25, 2002.Written closing arguments by the parties were presented to the trial court on or before July 16, 2002. The trial court issued an opinion and order finding Conely guilty on all three counts. Conely was sentenced, to fines of five hundred dollars ($500.00) on

each count.

Conely has appealed that conviction and sentence as of right to this Court.

After hearing oral argument on the appeal of this matter on May 28,2003, this Court directed the parties to submit briefs limited to the date of the offense and venue only.

The prosecution argues that the trial court was aware of Defendant's contention that there was no proof regarding the offense date because defense counsel argued it in his written closing argument to the trial court. In support of the prosecution's position. Appellee cites *People v Less,* 197 Mich App 131; 494 NW2d 797 (1992) which states:

> Factual findings are sufficient as long as it appears that the trial court was aware of the issues in the case and correctly applied the law. The court need not make specific findings of fact regarding each element of the crime. A court's failure to find the facts does not require remand where it is manifest that the court was aware of the factual issue, that it resolved the issue, and that further explication would not facilitate appellate review. (Internal

citations omitted.) *Id* 134, 135.

The People also cite *People v Rand,* 397 Mich 638; 247 NW2d 508 (1976), which states that the a written verdict is not void for uncertainty if the Jury's intent can be deduced by reference to the pleadings, court's charge and the entire record.

Defendant contends that the opinion and order of the trial court does not disclose any finding of fact as to the date of the alleged offenses or that the alleged offenses were committed, in Livingston County. Defendant correctly notes that there was no evidence-presented at trial as to Defendant's activities or the condition of his property on or about November 8, 2001, the date alleged in the Complaint.

Defendant further notes that venue is a necessary portion of the prosecution's case, People v Swift, 188 Mich App 619,470 NW2d 491 (1991); and that venue must be proven beyond a reasonable doubt. *People v Plautz,* 28 Mich *App*

621; 184 NW2d 761 (1970).

MCR 6.403 provides:

When trial by jury has been waived., the court with jurisdiction must proceed with the trial. The court must find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions of the record or in a written opinion made a part of the record.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, the evidence presented is reviewed in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella,* 424 Mich 221,268- 270,275; 380 NW2d 11 (1985); *People v Vaughn,* 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The trial court must make findings of fact and state separately its conclusions of law, MCR 6.403. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People* v *Smith.* 211 Mich App 233, 235; 535 NW2d 248 (1995). The trial court's findings of fact are reviewed for clear error. MCR 2.613(C); *People v Hermiz.* 235 Mich App 248,255; 597 NW2d 21 S (1999), affd 462 Mich.7]; 611 NW2d 783 (2000).

The trail court need not make specific findings as regards each element of the crime to comply with the dictates of MCR 6.403; *Legg, supra.* A trial court's **factual** findings are sufficient as long as it appears that the court was aware of the factual issues and correctly applied the law. *Id.* at 134.

"A finding is considered to be clearly erroneous if, after a review of the entire record, the appellate court is left

with a definite and firm conviction that a mistake has been made." People v Gistover, 189 Mich App 44,46; 472 NW2d 27 (1991). The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

There was no evidence presented at trial relating to November 8, 2001, the date alleged in the Complaint. Nor is there a finding as to this date by the trial court. The evidence, viewed in a light most favorable to the prosecution, does not support a conviction for acts occurring November 8, 2001.

Accordingly, the decision of the trial court is REVERSED.

THIS ORDER RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

Aug. 06, 2003
Date

Daniel A. Burress
Circuit Judge

APPENDIX -E-

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STATE OF MICHIGAN53 B JUDICIAL DISTRICT	COMPLAINT MISDEMEANOR	CASE NO. 01-5883 SM
ORI ,.,.,.,470025J	Court address 224 North First St., Brighton, Mi. 48116	
THE PEOPLE OF The State of Michigan v PATRICK JAY CONELY 4911 LANGDON BRIGHTON, MI. 48116		Victim or complainant DET/SGT TOM ARYERS Complaining witness DET/SGT TOM ARYERS
		Date On or about 11/08/2001

City/Twn./Village	County of Mi.	Defendant CTN	Defendant D.O.B.
BRIGHTON TOWNSHIP	Livingston	47-010003458-01	09/20/1954

Police agency report no.	Charges	Maximum penalty
120-147-2001	See Below	See Below

Witnesses		Defendant D.L.N.
DET/SGT TOM AYERS	BILL YOCUM	C 540 676 379 729
JENNIFER PLANCK	STEVE LYONS	

STATE OF MICHIGAN, COUNTY of Livingston

The complaining wrtness says that on the date and at the location described the defendant, contrary to law,

The complaining witness says that on the date and at the location described the defendant, contrary to law,

Count 1 SOLID WASTE - DISPOSAL OF REFUSE AT NON-LICENSED FACILITY did dispose of refuse at a place other than a disposal area licensed under the Solid Waste Management Part; contrary to MCL 324.11512(1); MSA 13A.11512(1); [324.115121] MISDEMEANOR: $1,000.00 fine (see MCL 324.11549)

Count 2 SOLID WASTE - ESTABLISHING A DISPOSAL AREA WITHOUT A PERMIT did establish a disposal area without first obtaining

Count 3 SOLID WASTE - OPERATING DISPOSAL AREA WITHOUT A LICENSE did conduct, manage, maintain, or operate a disposal area without having a license from the Department of Natural Resources; contrary to MCL 324.11509(1); MSA 13A.11509(1) [324.115122] MISDEMEANOR: $1,000.00 fine (see MCL 324.11549)

The complaining witness asks that defendant be apprehended and dealt with according to law.

(Peace Officers only) I declare that the statements above are true to the best of my information, knowledge, and belief.

_____ 7f^ Ulfl^-

^ _____

Warrant authorize

DC 225 (3/01) COMPLAINT, MISDEMEANOR

COURT

APPENDIX - E -
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STATE OF MICHIGAN
53rd DISTRICT COURT

SEARCH WARRANT

TO THE SHERIFF OR ANY PEACE OFFICER:

D/Sgt. Tom Ayers has sworn to the attached Affidavit regarding the following:

1. The person, place or thing to be search is described as and is located at

The entire premises commonly known Superior Sanitation. 4961 Walsh Rd., Brighton Township, Livingston County, Michigan, any and all structures, buildings, trailers, motor homes mobile homes, buses, boats or other vehicles therein. The property is located on the east side of Walsh Rd The property contains a one story building, tan in color with the visible address numbers 4961 on the building, next to the door. Included to be searched are the grounds, vehicles, wells, drains drain sumps, containers or tanks on or below the surface which could reasonably render a physical sample related to waste production, handling, management, storage or disposal; and including any location, equipment, cabinet, storage device, system or computer, whether free standing or networked, within the buildings where operation or production records may be kept;

2. The property to be searched for and seized, if found, is specifically described as:

a. Any files, records, both printed and electronic, notes, logs, memoranda, correspondence, bills, invoices, manifests, maintenance records, laboratory data or any other records, in any format, dealing with the production, handling, processing, transportation, storage and disposal of solid waste, liquid industrial waste, hazardous substances, hazardous waste or scrap tires.

b. Physical samples of possible hazardous substances, in and on the property, located at 4961 Walsh Rd. Physical samples may include, but are not limited to samples from land, water, air, buildings, vehicles, equipment, containers, drums or tanks on or below the surface of the ground, subsurface core samples and subsurface water samples.

c. Physical samples of waste, in and on the property, located at 4961 Walsh Rd. Physical samples may include, but are not limited to samples from land, water, air, buildings, vehicles, equipment, containers, drums or tanks on or below the surface of the ground, subsurface core samples and subsurface water samples.

d. In obtaining the physical samples as described in b & c above, it may be necessary to use heavy drilling equipment which, depending on the weather, may result in some land disturbance.

«. Records showing contractual or other business relationships, dealing with the production. handling, processing, transportation, storage and or disposal of solid waste, hazardous waste or liquid industrial waste.

f. Records showing ownership, management or control of the property of 4961 Walsh Rd.

g. Records showing ownership, management or control of Superior Sanitation operating at 4961 Walsh Rd.

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: I have found that probable cause exists and you are commanded to make the search and seize the described property. Leave a copy of this warrant with affidavit attached and a tabulation (a written inventory) of all property taken with the person from whom the property was taken or at the premises. You are further commanded to promptly return this warrant and tabulation to the Court.

Issued:

APPENDIX - E-
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STATE OF MICHIGAN
IN THE 53RD DISTRICT COURT

PEOPLE OF THE STATE OF MICHIGAN.
Plaintiff;
v. File No. 01-S883-SM
PATRICK JAY CONELY,
HON. FRANK R-DEL VERO
Defendant.

James W,MetzII(P58121)
Assistant Prosecuting Attorney
210 S. Highlander Way
Howell, MI 48843
(517)546-18590

Douglas D. Cameron (P26818)
• Attorney for the Defendant
317 W. Main Street
Brighton, MI 48116
(810)229-6167

OPINION AND ORDER

The Defendant, Patrick Jay Conely, is charged with three counts of violating Michigan's solid waste statute, including MCL 324.11512 (1), 324.11509(1) and

324.11512(2). The matter was before the Court on June 25, 2002 for a bench trial. The People and the Defendant submitted written closing arguments and the Court took the matter under advisement to review these arguments and the applicable law.

At trial, the People presented evidence of the condition of the Defendant's land and of the waste piles which are present on Defendant's land. The People also presented evidence that the Defendant's land was not part of the County Solid Waste Management Plan and that if the Defendant's land was a transfer facility, it would have to be part of the County Plan. Testimony also showed that the land in question was in fact owned by the Defendant and the Defendant did not have

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CLERK-QF DISTRICT COURT #53

a permit or license to establish or operate a disposal area. The Defendant argued that his land fits into the exception in MCL 324.11529 as a solid waste transfer facility and therefore, is exempt from the licensing and permit requirements of MCL 324.11509(1) and 324.11512(2).

The first issue which must be determined is if the items on the Defendant's land constitute solid waste as defined by the Natural Resources and Environmental Protection Act. Reviewing MCL 11506(1), which gives the definition of solid waste, it would appear the waste piles on the Defendant's land do constitute solid waste. It appears that most of the items would be considered rubbish and they do not fit into any of the exceptions listed in MCL 324.11506.

Count One of the Complaint charges the Defendant with disposing of solid waste at a non-licensed facility in violation of MCL 324.11512(1). The evidence presented by the People showed that the Defendant had solid waste disposed of on his premises. The Defendant is also not a licensed disposal area. The People's exhibits and testimony from

witnesses prove beyond a reasonable doubt that the Defendant was disposing of solid waste at an unlicensed disposal area and therefore is guilty of violating MCL 324.11512(1).

Count Two and Three of the Complaint charge the Defendant with violating MCL 324.11509(1) and 324.11512(2). Both of these sections reference the exemption in MCL 324.11529 for solid waste transfer facilities. Accordingly, this Court must determine if the Defendant's land can be considered a solid waste transfer facility. The definition of a solid waste transfer facility, as given in MCL 324.11506(5), is "a tract of land ... that is used or intended for use in the rehandling or storage of solid waste incidental to the transportation of the solid waste, but not located at the site of generation or the site of disposal of the solid waste." *Id.* If the Defendant's land is considered a solid waste transfer facility, it would appear that he would be entitled to the exemption in MCL 324.11529 which stated that solid waste transfer facilities are not subject to construction permit and operating license requirements if they are within certain

requirements listed in the statute.

However, it does not appear that the Defendant's land fits the definition of a solid waste transfer facility. First, the Defendant's land does not meet the definition of a solid waste transfer facility given in the statute. The Defendant did not show that the waste on his land was being stored or rehandled incidental to transportation, as is required by the definition in the statute. People's witness, Tom Ayres, testified that he observed large waste piles that appeared to have been on the Defendant's land for long periods of time. He also stated that he observed the waste piles which did not significantly change over the period of time in which he made visits to the Defendant's land. Furthermore, the People's witness Jennifer Melcher, testified that to be a solid waste transfer facility, the land must be part of the County plan, which the Defendant's land is not. Ms. Melcher testified that she told the Defendant what he would need to do to be in compliance with the County plan, but the Defendant chose not to take these steps.

Because the Defendant's land does not fit the exception in MCL 324.11529, and because the evidence showed the Defendant did not have a construction permit, the Defendant is guilty of Count Two, establishing a disposal area without a construction permit, in violation of MCL 324.11509(1). Additionally, because the Defendant did not have a license to operate his disposal area, he is guilty of Count Three, operating a disposal area without a license, in violation of 324.11512(2).

Therefore, the Court finds the Defendant guilty of the three counts in the Complaint. The Court will enter a judgment of conviction and order the Defendant to the 53rd District Court Probation Department on August 29, 2002 at 8:30 a.m. with sentencing to be conducted on September 16, 2002 at 2:00 p.m.

So Ordered.

Dated: 8-14-02

Hon. Frank R. Del Vero
District Judge
53rd Judicial District Court
204 S. Highlander Way
Howell, Michigan 48843
(517) 548-1000

ADDENDUM - A -
Essential Elements Rule

ARTICLE IV, § 2, cl 1

Section 2, Clause 1. Privileges and immunities of citizens. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

119 Wn.2d 623, P.2d 212, AUBURN v. BROOKE
[Essential Elements Rule]

[Nos. 57867-2, 57972-5. En Banc. September 10, 1992.]

AUBURN v. BROOKE

THE CITY OF AUBURN, Respondent, v. JAMES A. BROOKE, Petitioner.
THE CITY OF SEATTLE, Respondent, v. CASPER SCOTT WANDLER, Petitioner.

[1] **Indictment and Information — Sufficiency — Notice of Charge — Essential Elements. The Sixth Amendment and Const. art. 1, §§ 22 (amend. 10) require that all the essential elements of a crime, both statutory and nonstatutory, be included in a charging document in order to afford the accused notice of the nature and cause of the accusation.**

[2] Indictment and Information — Sufficiency — Notice of Charge — Citation — In General. The constitutional requirement that a charging document set forth all the essential elements of the crime charged applies to all types of crimes (felonies, gross misdemeanors, and misdemeanors) and to all charging documents, including citations used as final charging documents.

[3] Indictment and Information — Purpose — In General. The primary function of charging documents is to give the accused notice of both the elements of the crime charged and the conduct which allegedly constituted the crime so that the accused can prepare a defense.

[4] Courts — Rules of Court — Validity — Conflict With Constitutional Rights. Court rules cannot diminish parties' constitutional rights.

[5] Indictment and Information — Citation — Amendment — Prejudice — In General. A criminal citation may be amended if the defendant is not prejudiced thereby.

[6] Indictment and Information — Sufficiency — Notice of Charge — Resort to Code. Criminal defendants should not have the burden of locating the code containing the crime of which they are charged and determining the elements of the crime from the proper code section.

[7] Indictment and Information — Sufficiency — Review — Failure To Raise Before Verdict — Standard of Review. When a criminal defendant first raises a challenge to a charging document after return of the verdict, the court will determine the validity of the document by determining whether the necessary facts appear in any form, or by fair construction can be found, in the document and, if so, whether the defendant can show actual prejudice by the inartful language which caused a lack of notice.

[8] Indictment and Information — Sufficiency — Citation — Name and Numerical Code Section. A misdemeanor or gross misdemeanor citation used as a final charging document does not satisfy the constitutional requirement that a charging document set forth all the essential elements of the crime

charged by stating the name of the crime and its numerical code section unless such an abbreviated form constitutes a complete statement of the essential elements of the crime.

Nature of Action: Defendant Brooke was charged with trespass and disorderly conduct. Defendant Wandler was charged with driving while intoxicated and hit and run of an attended vehicle in violation of a municipal ordinance. The charging documents for both defendants recited numerical code sections and the names of the crimes.

District Court: After the trespass charge against defendant Brooke was dismissed and he pleaded guilty to disorderly conduct, the King County District Court, Aukeen Division, Nos. 12851 and 122094, Darrell E. Phillipson, J., on June 30, 1988, denied defendant Brooke's motion to withdraw his guilty plea.

Municipal Court: The Seattle Municipal Court, No. 87-035-0030, Norma Smith Huggins, J., on September 24, 1987, entered a judgment on a verdict finding defendant Wandler guilty of hit and run of an attended vehicle and not guilty of driving while intoxicated.

Superior Court: The Superior Court for King County, No. 88-1-03568-3, Faith Enyeart, J., on December 15, 1988, affirmed the denial of defendant Brooke's motion to withdraw his guilty plea. The Superior Court for King County, No. 87-1-04076-0, John W. Riley, J., on August 8, 1988, affirmed the judgment of guilty against defendant Wandler.

Court of Appeals: In the Brooke case, the court at 60 Wn. App. 87 affirmed the decision of the Superior Court and the judgment, holding that the citation was a constitutionally adequate charging document. In the Wandler case, the court at 60 Wn. App. 309 affirmed the decision of the Superior Court

and the judgment, holding that the municipal ordinance did not conflict with state law and that the charging document was a citation and was constitutional.

Supreme Court: Holding that the charging documents violated the essential elements rule, the court reverses the decisions of the Court of Appeals and the judgments and dismisses the charges.

Suzanne Lee Elliott of Washington Appellate Defender Association, for petitioner Brooke.

C. Wesley Richards, Elaine Winters, and Jeffrey E. Ellis of Seattle-King County Public Defender Association, for petitioner Wandler.

Stephen R. Shelton, City Attorney, and Judith C. Ausman, Assistant, for respondent Auburn.

Mark H. Sidran, City Attorney, and Margaret M. Boyle, Assistant, for respondent Seattle.

Nancy L. Talner on behalf of Washington Association of Criminal Defense Lawyers, amicus curiae for petitioners.

ANDERSEN, J. —

FACTS OF CASE

These two consolidated cases involve the constitutional requirements for misdemeanor and gross misdemeanor citations used as final charging documents.

AUBURN V. BROOKE

On March 18, 1987, the City of Auburn charged James A.

Brooke by citation with disorderly conduct and trespass. The citation was issued by a police officer at the scene of the alleged crimes. The trespass charge was ultimately dismissed and is not in issue. The citation described the disorderly conduct charge simply as follows:

"9.40.010(A)(2) Disorderly Conduct."

On April 21, 1987, Brooke pleaded guilty to this charge and was sentenced to 90 days in jail (60 days suspended) and fined $500 ($300 suspended).

Brooke subsequently moved to set aside his guilty plea on grounds not relevant here. The Superior Court refused to set the plea aside. Brooke sought review in the Court of Appeals arguing for the first time that the disorderly conduct citation, also used as the final charging document, was constitutionally defective because it failed to include all of the essential elements of the crime charged. The Court of Appeals granted review on the sole issue of whether the charging document was sufficient.

The Court of Appeals concluded that the citation was a constitutionally adequate charging document and affirmed Brooke's conviction. Auburn v. Brooke, 60 Wn. App. 87, 803 P.2d 1325 (1991). We accepted review and consolidated the Brooke case with Seattle v. Wandler, 60 Wn. App. 309, 803 P.2d 833, review granted, 117 Wn.2d 1008 (1991).

SEATTLE V. WANDLER

On February 3, 1987, Casper Scott Wandler was charged with two violations of the Seattle Municipal Code. The citation was signed by the two investigating police officers and described the offenses as follows:

"11.56.420 Hit/Run; Attended" and "11.56.020(B) DWI".

Wandler did not sign the citation; in place of his signature appears the word "refused". Wandler was booked into jail following his refusal to sign the citation. The parties have stipulated that some initials appearing on the citation (which was the only charging document used) represent the signature of an assistant city attorney. At his municipal court trial, a jury found Wandler guilty of hit and run driving, and not guilty of driving while intoxicated.

Wandler appealed the hit and run driving conviction to the Superior Court on several grounds not relevant here and the Superior Court affirmed the conviction. The Court of Appeals granted review on the issue of the validity of the Seattle ordinance and also on the issue of the constitutional sufficiency of the citation also used as the final charging document. Wandler first raised the issue of the constitutionality of the charging document in the Court of Appeals. That court affirmed the conviction holding the Seattle ordinance valid and, relying on the Brooke decision, held that the citation was a constitutionally adequate final charging document. Seattle v. Wandler, 60 Wn. App. 309, 803 P.2d 833, review granted, 117 Wn.2d 1008 (1991).

We accepted review of Wandler on the sole issue of the sufficiency of the citation as the charging document.

These consolidated cases present a single issue.

ISSUE

Does a misdemeanor or gross misdemeanor citation used as the final charging document in a criminal prosecution satisfy the "essential elements" rule if it states only a numerical code

section and the name of a criminal offense?

DECISION

CONCLUSION. The essential elements rule applies to all charging documents, including citations used as final charging documents; the recitation of no more than a numerical code section and the title of an offense does not satisfy that rule unless such abbreviated form contains all essential elements of the crime(s) charged.

[1, 2] An accused must be informed of the criminal charge he or she is to meet at trial and cannot be tried for an offense which has not been charged. ««1»»

State v. Irizarry, 111 Wn.2d 591, 592, 763 P.2d 432 (1988).
It has long been settled law in this state that all essential statutory

State v. Kjorsvik, 117 Wn.2d 93, 97, 812 P.2d 86 (1991) **recently held that nonstatutory essential elements must also be included in a charging document.**

elements of a crime must be included in the charging document in order to afford notice to an accused of the nature and cause of an accusation against the accused.

Kjorsvik, 117 Wn.2d at 97; State v. Leach, 113 Wn.2d 679, 688, 782 P.2d 552 (1989) (citing Leonard v. Territory, 2 Wash. Terr. 381, 392, 7 P. 872 (1885)); State v. Holt, 104 Wn.2d 315, 704 P.2d 1189 (1985).

This rule of law is based on Const. art. 1, §§ 22 (amend. 10) and on the Sixth Amendment; it is generally referred to as the essential elements rule. Many of the cases in this court

which have applied the essential elements rule were misdemeanor and gross misdemeanor prosecutions. ««4»»

See, e.g., State v. Carey, 4 Wash. 424, 30 P. 729 (1892); State v. Heath, 57 Wash. 246, 106 P. 756 (1910); Seattle v. Jordan, 134 Wash. 30, 235 P. 6 (1925); Seattle v. Proctor, 183 Wash. 299, 48 P.2d 241 (1935); Seattle v. Morrow, 45 Wn.2d 27, 273 P.2d 238 (1954); State v. Moser, 41 Wn.2d 29, 246 P.2d 1101 (1952).

In the fairly recent case of State v. Leach, 113 Wn.2d 679, 782 P.2d 552 (1989), we addressed the issue of whether a charging document, involving a misdemeanor offense filed in a court of limited jurisdiction, must state all the statutory elements of the alleged crime in order to satisfy due process. Our unanimous opinion in Leach stated:

In holding that a charging document which omits a statutory element of the crime charged violates a defendant's constitutional rights, the court in [State v. Holt, 104 Wn.2d 315, 704 P.2d 1189 (1985)] did not distinguish between misdemeanors and felonies, nor between complaints and citations. In applying the Holt rule, there is no logical reason to distinguish between complaints and citations or felonies and misdemeanors. If a misdemeanor citation or complaint omits a statutory element of the charged offense, the document is constitutionally defective for failure to state an offense and is subject to dismissal.

Leach, 113 Wn.2d at 687. Leach also reiterated that "[a] defendant's due process right to notice of the offense charged does not depend upon whether the charging document is a complaint or a citation and notice." ««5»»

Leach, 113 Wn.2d at 694.

Relying on Leach, the respondent cities argue that while

misdemeanor complaints have to satisfy the essential elements rule, misdemeanor and gross misdemeanor citations ««6»»

A citation may be issued to a defendant at the scene of an offense by a police officer and is deemed to be a complaint when certain requirements are met. CrRLJ 2.1(b)(1), (6); former JCrR 2.01(b)(4).

do not have to state the essential elements of the crime charged. This appears to be a misunderstanding of a distinction drawn in Leach. Leach, 113 Wn.2d at 697-98 states as follows:

Although the constitutional requirement for adequate notice is the same whether that notice is given by complaint or by citation and notice, there is a logical basis for reasonably distinguishing between misdemeanor defendants issued citations and those served with complaints. Complaints must be more detailed since they are issued by a prosecutor who was not present at the scene of the crime. Defining the crime with more specificity in a complaint assists a defendant in determining the particular incident to which the complaint refers. Citations, however, are generally issued by law enforcement officers who have personal contact with defendants at the scene. Defendants charged by citation are necessarily aware of the particular incidents for which officers are charging them. They presumably know the facts underlying their charges. Further, the citation charging procedure permits officers to initiate prosecutions without unjustifiable expense and delay. In addition, the procedure under CrRLJ 2.1(b) facilitates an officer's ability to charge defendants at the scene and then to release those persons for whom jailing is unnecessary. Differing procedures and requirements for charging by complaint and by citation and notice do not violate due process and equal protection rights.

(Footnotes and citations omitted. Some italics ours.)

The cities conclude from this that the elements of the crime need not be stated in a citation even when it is used as the final charging document in a criminal prosecution. If we accepted this contention, the effect would be that one defendant charged by complaint would be afforded a statement of the essential elements of the crime charged while another defendant charged with the identical crime by citation used as a final charging document would not have to be given a statement of the essential elements of the crime charged. Leach does not lead to such an anomalous result.

[3] To understand the distinction in Leach, it is helpful to look to the purpose and function of charging documents. The primary purpose is to give notice to an accused so a defense can be prepared.

Kjorsvik, 117 Wn.2d at 101.

There are two aspects of this notice function involved in a charging document: (1) the description (elements) of the crime charged; and (2) a description of the specific conduct of the defendant which allegedly constituted that crime. As we recently made clear in Kjorsvik, ««8»»

Kjorsvik, 117 Wn.2d at 98.

the "core holding of Leach requires that the defendant be apprised of the elements of the crime charged and the conduct of the defendant which is alleged to have constituted that crime." Leach noted that often charging documents are written by alleging specific facts which support each element of the crime charged.

Leach, 113 Wn.2d at 688.

Although Leach stated that the facts need not be as detailed in

a citation because it is issued at the scene of the alleged crime, it did not say that a citation need not set out the essential elements of the crime charged. In fact, Leach specifically held that a citation describing an offense as DWI (the well known acronym for Driving While Intoxicated) was sufficient because it was "a complete statement of the statutory elements constituting the offense charged".

Leach, 113 Wn.2d at 695.

Any misconception in this regard engendered by Leach should have been put to rest by Seattle v. Hein, 115 Wn.2d 555, 799 P.2d 734 (1990).

In Hein, the defendant was convicted of violating Seattle Municipal Code (S.M.C.) 11.56.020(B) (being in actual physical control of a vehicle while intoxicated). The Superior Court reversed the conviction on the ground that the citation, also used as the final charging document, described the offense only by municipal code section number and the words "physical control". The City sought review in the Court of Appeals which deferred consideration of the motion pending our opinion in Leach, and thereafter denied review. The City thereupon petitioned this court for discretionary review.

This court's commissioner denied review, declaring that Leach nowhere suggests that a different constitutional standard applies to citations and that reference in the citation to a code section will not remedy the omission of an element of the crime. We denied the motion to modify the commissioner's ruling by a per curiam opinion, holding:

The City of Seattle's motion to modify the ruling of the Commissioner of this court in the above entitled case is denied. **The essential elements rule, discussed in State v. Leach, 113 Wn.2d 679, 782 P.2d 552 (1989), applies to citations.**

Hein, 115 Wn.2d at 556.

The respondent cities also argue that compliance with the Washington Rules of Court should satisfy all constitutional requirements for citations which are also used as final charging documents.

At the outset, it is necessary to clarify one point. The parties hereto in their briefing to this court, as well as both Court of Appeals decisions presently before us, rely upon the Criminal Rules for Courts of Limited Jurisdiction (CrRLJ). These rules, however, did not supersede the Justice Court Criminal Rules (JCrR) until September 1, 1987, after these alleged offenses occurred.

Official Rules of Court, Table of Adoptions and Amendments; 108 Wn.2d 1149; Leach, 113 Wn.2d at 685 n.5.

In the Brooke case, the date of the alleged crime was March 17, 1987, and the issuance of the charging document was March 18, 1987. In the Wandler case, the date of the alleged crime and issuance of the charging document was February 3, 1987. Therefore, the correct rules to be applied in both cases are the Justice Court Criminal Rules (JCrR).

While the interests of accuracy require us to note this clarification, it does not make a significant difference in the ultimate outcome of the cases because the relevant rules are quite similar. The one meaningful difference between those two rules is that CrRLJ 2.1(b)(3)(iii) (cited by the Court of Appeals as well as the parties) replaced JCrR 2.01(b)(2)(iii) and added that a citation should also include the "numerical code section". In fact, the citations in both Brooke and Wandler do include the numerical code sections.

Former JCrR 2.01(b), applicable to the cases before us, states

in part:

(1) Issuance. Whenever a person is arrested for a violation of law which is punishable as a misdemeanor or gross misdemeanor the arresting officer, or any other authorized peace officer, may serve upon the arrested person a citation and notice to appear in court, in lieu of continued custody.

(2) Contents. The citation and notice shall include:

(i) the name of the court and a space for the court's docket, case or file number;

(ii) the name of the person, his address, date of birth, and sex;

(iii) the date, time, place

The new rule adds the words "numerical code section" to the list in subsection (iii). CrRLJ 2.1(b)(3)(iii).

and description of the offense charged, the date on which the citation was issued, and the name of the citing officer;

(v) a space for the person to sign a promise to appear.

(3) Release. To secure his release, the person must give his written promise to appear in court as required by the citation and notice served.

(4) Certificate. The citation and notice to appear shall contain a form of certificate by the citing official that he certifies, under penalties of perjury, . . . that he has reasonable grounds to believe, and does believe, the person committed the offense contrary to law. . . . Such citation and notice when signed by the citing officer and filed with a court of competent jurisdiction shall be deemed a lawful complaint for the purpose

of initiating prosecution of the offense charged therein.

(5) Additional Information. The citation and notice may also contain such identifying and additional information as may be necessary.

We do not perceive any conflict between the rule that the essential elements of the crime must be included in a charging document and the requirements of the old or new rule since both rules require a "description of the offense charged". This is congruent with the requirements of the essential elements rule.

[4] As Leach made clear, however, even if the court rules did conflict with the constitutional requirements of the essential elements rule, the court rules cannot diminish constitutional rights.

A defendant's due process right to notice of the offense charged does not depend upon whether the charging document is a complaint or a citation and notice. The requirement of CrRLJ 2.1(b)(3)(iii) that the citation contain a "description of the offense charged" does not circumvent the constitutional requirement that the citation must apprise defendants with reasonable certainty of the nature of the accusations against them. . . . While the Criminal Rules for Courts of Limited Jurisdiction present efficient procedures for initiating prosecution of misdemeanor crimes in courts of limited jurisdiction, application of the rules must not abridge a defendant's constitutional rights.

(Footnote omitted.) State v. Leach, 113 Wn.2d 679, 694-95, 782 P.2d 552 (1989). See also State v. Pelkey, 109 Wn.2d 484, 490, 745 P.2d 854 (1987) (court cannot sustain an interpretation of a court rule which contravenes the constitution); CrRLJ 1.1 ("These rules shall not be construed to

affect or derogate from the constitutional rights of any defendant.").

The respondent cities also rely upon CrRLJ 2.4(b). The predecessor of that rule, JCrR 2.04(b), applies to the cases before us; it declares as follows:

Citation and Notice. No citation and notice issued pursuant to the provisions of rule 2.01(b) shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific offense with which the defendant is charged, nor by reason of defects or imperfections which do not tend to prejudice substantial rights of the defendant. Any defendant upon request shall be entitled as a matter of right to a bill of particulars.

The newer rule, CrRLJ 2.4(b), has made the granting of a bill of particulars discretionary with the court. See generally 4A L. Orland & K. Tegland, Wash. Prac., Rules Practice 776 (4th ed. 1990).

We discern no conflict between this rule and the requirement that the essential elements of the alleged crime must be included in all charging documents. We decline to interpret court rules so as to diminish constitutional rights. The declaration in the foregoing court rules that no citation is insufficient for failure to contain essential facts is consistent with the Leach distinction that detailed facts are not required when an officer gives a citation to the accused at the scene of the alleged crime because the accused will know the "incident" to which the charge refers. By knowing the facts, however, the accused will not necessarily know what crime is being charged, its definition, or the elements of that offense.

The City of Seattle argues that since the **"essential facts"** are known to the defendant Wandler, a requirement that the

citation include the statutory elements of the crime is unnecessary and unreasonable. This argument is not tenable because it assumes a defendant's actions always constitute the **"essential facts", i.e.**, that the defendant is always guilty of the crime charged.

In Brooke, the Court of Appeals concluded that a citation must be deemed sufficient if it contains a reference to the numerical code section number of the offense along with a brief description of the offense, that court's reasoning being it is unrealistic to expect arresting police officers to know the elements of every crime.

Auburn v. Brooke, 60 Wn. App. 87, 93, 803 P.2d 1325 (1991).

Under the Washington Rules of Court, an officer is required to certify on the citation, under penalty of perjury, that he or she has reasonable grounds to believe the person cited has committed the offense.

JCrR 2.01(b)(4). See CrRLJ 2.1(b)(5) (probable cause).

It is difficult to understand how such a certification could be made absent at least some knowledge of the elements of the offense. [knowledge and belief]

[5] In any event, even though an officer in the field may not know (or have access to) a listing of elements of an offense for which a citation is issued, under the court rules above referred to, a citation may be amended if the defendant is not prejudiced thereby.

JCrR 4.10; CrRLJ 2.4(f); State v. Leach, 113 Wn.2d 679, 694, 782 P.2d 552 (1989).

The amendment rule is a liberal one and should ordinarily permit any necessary amendments.

[6] The only reasoned basis by which we could uphold the Court of Appeals decisions herein would be to conclude that a reference in a citation to the numerical code section defining the offense incorporates the contents of that code section into the citation used as a final charging document. The very real problem with so concluding, however, is that the defendant would have the burden of locating the relevant code (in these cases the former Auburn Code and the Seattle Municipal Code) and **determining the elements of the offense** from the proper code section. In misdemeanor and gross misdemeanor cases especially, where defendants are often unrepresented by counsel, that is an unfair burden to place on an accused.

In many cases, people who are issued citations will simply pay the fine, and may even serve jail time, without taking the time and expense required to hire counsel or to mount their own defense. It is only fair that those accused of all crimes, however minor, be informed of the elements of the charges against them before they decide to forgo a defense. We have repeatedly said that defendants should not have to search for the rules or regulations they are accused of violating.

State v. Kjorsvik, 117 Wn.2d 93, 102, 812 P.2d 86 (1991); State v. Jeske, 87 Wn.2d 760, 765, 558 P.2d 162 (1976).

A long line of cases have held that it is sufficient to charge in the language of the statute if the statute defines the offense with certainty.

Kjorsvik, 117 Wn.2d at 99 n.4 and cases cited therein.

As Leach explained (citing to State v. Royse, 66 Wn.2d 552, 557, 403 P.2d 838 (1965)), an information must state the acts constituting the offense in ordinary and concise language **and should not just state the name of the offense**.

Leach, 113 Wn.2d at 689.

[7, 8] Since we reaffirm Leach and Hein, as further explained herein, the proper analysis by which to consider the sufficiency of these charging documents is that found in our recent opinion in State v. Kjorsvik, 117 Wn.2d 93, 812 P.2d 86 (1991). Kjorsvik held that all elements of a crime must be included in the charging document.

In a footnote in Kjorsvik, we observed that we declined therein to address the issue of sufficiency of misdemeanor citations because that issue was not before this court, and because the Court of Appeals cases presently before us were pending at that time. Kjorsvik, 117 Wn.2d at 97 n.1.

It also held that the constitutionality of a charging document can be first raised on appeal but will be more liberally construed in favor of validity if not challenged until after verdict. Kjorsvik, 117 Wn.2d at 102. We also held that if such issue is raised for the first time on appeal, the 2-prong Kjorsvik test asks: (1) do the necessary facts appear in any form, or by fair construction can they be found, in the charging document; and, if so, (2) can the defendant show that he or she was nonetheless actually prejudiced by the inartful language which caused a lack of notice. The first prong of the test looks to the face of the charging document itself and there must be some language in the document giving at least some indication of the missing element.

Kjorsvik, 117 Wn.2d at 106.

One does not reach the second or prejudice prong unless there is some language relating to the element — however inartful — in the document. In the cases before us, the citations make no attempt to state the elements or the facts supporting the elements; they merely state the numerical code sections defining the offenses and the titles of the offenses alleged.

Brooke

The citation in Brooke simply stated:
"9.40.010(A)(2) Disorderly Conduct."

It is not even apparent from the citation that the numerical section cited refers to the former Auburn City Code, though the parties agree that it does. The former version of Auburn City Code 9.40.010(A)(2), in effect when Brooke allegedly committed his offense, stated:

A. A person is guilty of disorderly conduct if, with a purpose to **cause public danger**, alarm, disorder, nuisance, or if with the knowledge that he is likely to create such public danger, alarm, disorder or nuisance**, he willfully:**

2. Engages in fighting or in violent, threatening or tumultuous behavior; . . .

The City of Auburn concedes that the citation did not specify the elements of the offense alleged in the citation.

Wandler

Mr. Wandler argues that the citation issued to him, also used as the final charging document, was a complaint and not a citation since he refused to sign it — and also because it was initialed by a city attorney as well as being signed by the issuing police officers.

The critical difference between a citation and a complaint is that a citation is issued by a police officer whereas a complaint is issued and signed by a prosecutor.

JCrR 2.01; CrRLJ 2.1; Leach, 113 Wn.2d at 698.

An officer is allowed to issue a citation without prior approval of a prosecutor,

Leach, 113 Wn.2d at 686; JCrR 2.01(b)(1); CrRLJ 2.1(b)(1).

and when signed and certified by the officer and properly filed, it is deemed a lawful complaint for the purpose of initiating prosecution.

JCrR 2.01(b)(4); CrRLJ 2.1(b)(6).

The signature of the accused thereon is just a promise to appear and allows an officer to release the individual based on that promise.

JCrR 2.01(b)(2)(v), (3); CrRLJ 2.1(b)(3)(v), (4).

The charging document in the Leach case (Elverston portion) was also unsigned by the accused and signed by both a prosecutor and the issuing police officer. In Leach, we treated that document as a citation rather than a complaint. The Court of Appeals decision in Wandler correctly concluded that lack of the defendant's signature and the presence of a prosecutor's initials did not convert the charging document from a citation into a complaint. However, as noted, even a citation must comport with the essential elements rule.

The charging document in Wandler stated:

"11.56.420 Hit/Run; Attended".

The parties agree the numerical citation refers to the Seattle Municipal Code. S.M.C. 11.56.420 states:

Hit and run (attended) — Duty in case of accident with occupied vehicle.

The operator of any vehicle involved in an accident resulting in damage to a vehicle which is operated or occupied by any person shall do the following:

A. Immediately stop such vehicle at the scene of the collision, or as close thereto as possible, and forthwith return to and remain at the scene of such accident until he or she has done the following; and

B. Give his or her name, address and vehicle license number, and exhibit his or her vehicle operator's license, to the operator or any occupant of the other vehicle; and

C. Render to any person involved in such accident reasonable assistance including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment may be necessary or if such carrying is requested by the person involved in the accident or on his or [her] behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this section be evidence of the liability of any operator for such accident.

The City of Seattle also concedes that the citation did not specify the elements of the alleged offense.

Applying the first prong of Kjorsvik, it is apparent from the

record that in each of the cases before us the necessary elements of the offenses alleged do not appear in any form in the charging documents. Hence, we do not reach the second or prejudice prong of Kjorsvik. And since the essential elements rule applies to misdemeanor and gross misdemeanor citations, the citations herein are defective as final charging documents and the convictions based thereon must be reversed and the charges dismissed without prejudice.

Holt, 104 Wn.2d at 323; Leach, 113 Wn.2d at 687.

The cities have suggested that our continued adherence to Hein and Leach will result in an avalanche of reversals of misdemeanor and gross misdemeanor convictions. We do not accept this as a likely result for several reasons. First, we presume prosecutors have generally understood from Leach and Hein, if not before, that the essential elements rule applies to all final charging documents. In any event, and as a practical matter, this ruling will usually apply only to cases in which convictions are not yet final. Persons convicted of misdemeanors and gross misdemeanors who raise the issue of an insufficient charging document on collateral attack must establish that their rights were actually and substantially prejudiced.

In re Cook, 114 Wn.2d 802, 810-11, 792 P.2d 506 (1990); In re St. Pierre, 118 Wn.2d 321, 328, 823 P.2d 492 (1992); In re Williams, 111 Wn.2d 353, 364, 759 P.2d 436 (1988).

If a petitioner fails to meet the threshold burden of showing actual prejudice arising from constitutional error, the petition will be dismissed.

Williams, 111 Wn.2d at 364.

Errors in final charging documents do not constitute per se

prejudicial error on collateral review.

In re St. Pierre, 118 Wn.2d at 329.

Furthermore, even if a conviction is reversed due to an insufficient charging document, the result is a dismissal without prejudice to the right of the municipality or state to recharge and retry if it so chooses. Our state and federal constitutions both permit retrial after a conviction is reversed due to a defect in a charging document.

Montana v. Hall, 481 U.S. 400, 95 L. Ed. 2d 354, 107 S. Ct. 1825 (1987); Ball v. United States, 163 U.S. 662, 41 L. Ed. 300, 16 S. Ct. 1192 (1896); United States v. Pomponio, 517 F.2d 460, 463 (4th Cir.), cert. denied, 423 U.S. 1015 (1975); State v. Irizarry, 111 Wn.2d 591, 763 P.2d 432 (1988); State v. Markle, 118 Wn.2d 424, 441, 823 P.2d 1101 (1992) (quoting State v. Anderson, 96 Wn.2d 739, 742, 638 P.2d 1205, cert. denied, 459 U.S. 842 (1982)).

Similarly, statutes of limitation usually do not bar recharging a defendant whose conviction has been reversed due to a defective charging document.

See RCW 9A.04.080(3).

Based on the foregoing, petitioner James A. Brooke's conviction for disorderly conduct and petitioner Casper S. Wandler's conviction for hit and run driving are reversed and remanded for dismissal of the charges without prejudice to the refiling of the charges against them.

DORE, C.J., and UTTER, BRACHTENBACH, DOLLIVER, DURHAM, SMITH, GUY, and JOHNSON, JJ., concur.

Supreme Court, U.S.
FILED
JUN 30 2006
OFFICE OF THE CLERK

NO 05-1381

IN THE SUPREME COURT OF THE UNITED STATES

PATRICK JAY CONELY
PETITIONER

v.

MICHIGAN,
RESPONDENT

PETITIONER, PATRICK JAY CONELY'S SUPPLEMENTAL BRIEF

Patrick Jay Conely
Citizen of the United States
in propia persona
c/o 4961 Walsh Drive
P.O. BOX 361
Brighton, Michigan, in the United States [48116]
Petitioner
(810) 227-1298

To the Honorable Justices of the Supreme Court of the United States.

Whereas in his Supplemental Brief, to the Supreme Court of the United States Patrick Jay Conely, natural Citizen of the United States, Petitioner in this cause of action respectfully presents his Supplemental Brief, and submit the following reasons why his prayer for writ of State Certiorari should be granted:

Patrick Jay Conely, Petitioner, Citizen with his private domicile in the sovereign United States re-states his plea to the Constitution of the United States in Bar of the action, notwithstanding which the court and the justices of the United States Supreme Court gives judgment against him in the particular matters now before the Court of the Union of the United States saying "the lawful demand of one's rights" jus prosequendi in judicio quod alicui debetur.

That there can be "a case in law and equity". Arising under the Constitution to which the judicial power does extend arising under section 8 of Article 1 of the Constitution of the United States and under section 5 of the Fourteenth Amendment is established [p]ursant to the affirmative powers of congress; and further says the jurisdiction conferred is within the power of Congress, the limitations of the judicial power, as established by the Constitution of the United States.

Pursuant to the positive "laws of the United States under the Constitution of the United States, and moves this court under 1 U.S.C. § 204 (a) "prima facie" evidence "legal evidence of laws," § 112 – Statutes at Large are "legal evidence" of the laws contained therein and are accepted as proof of those laws in any court of the United States. **Bear v. United States, 611 F. Supp. 589, (1985, D.C. Neb.);** 1 U.S.C. § 110; Saving clause of Revised Statutes; 1 U.S.C. § 111 – Repeals as evidence of prior effectiveness.

Petitioner, Patrick, Jay Conely, herein incorporates a petition (Motion) to allow additional pages under Rule 33 (g) (iv) as this is most important to explain to the court and justices of this court and pleads to;

By the 32d section of the act to establish the judicial courts of the United States it is provided

"That no summons, writ, return, process, judgment or other proceedings in civil causes in any of the courts of the United States shall be abated, arrested, quashed or reversed for any defect or want of form, but the said courts, respectively, shall proceed and give judgment according as the right of the cause and matter in law shall appear to them, without regarding any imperfections, defects or wants of form in such writ, declaration, or other pleading, return, process, judgment or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially set down and express, together with his demurrer, as the cause thereof." In view of **Roach v. Hulings, 41 U.S. (16 Pet.) 319 (1842) in this action at law as a case in actual controversy.**

The petitioner, Patrick Jay Conely is not a licensed attorney and should not be held to the same standards as a licensed attorney in this action on behalf of himself.

JURISDICTIONAL STATEMENT

Section 1 of article 3 of the Constitution provides:

"The judicial power of the United States shall be vested in the Supreme Court and in such inferior courts as the Congress may from time to time, ordain and establish
Section 2 of the same article provides:"

"**The judicial power shall extend to all cases, in law and equity,** arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects. Under the Constitution of the United States, the exercise of judicial power is limited to cases and controversies."

"A case or controversy, in order that the judicial power of the United States may be exercised thereon, implies the existence of present or possible adverse parties whose contentions are submitted to the court for adjudication." **[Chisholm v. Georgia, 2 Dall. 431].**

"The exercise of judicial power under Art. III of the Constitution depends on the existence of a case or controversy," that Patrick Jay Conely, Petitioner has presented to this court

sued in his own name with the "pursuance of an honest and actual antagonistic assertion of his rights against the Respondents, The People of the State of Michigan, The State of Michigan/Michigan as alleged in his Petition for writ of certiorari **["Muskrat v. United States, 219 U.S. 346, 359 (1911)"]** of his valuable legal rights as a natural Citizen of the United States.

Petitioner raised several issues in the Questions presented; "[w]hen an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law, **[Kamen v. Kemper Financial Services, Inc., 500 U.S. 90, 99 (1991)]**, even where the proper construction is that a law does not govern because it is not in force . "The judicial Power" extends to cases "arising under . . . the Laws of the United States," Art. III, § 2, cl. 1, and a court properly asked to construe a law has the constitutional power to determine whether the law exists." **[Cf. Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 405 (1821)]**("[I]f, in any controversy depending in a court, the cause should depend on the validity of such a law, that would be a case arising under the constitution, to which the judicial power of the United States would extend") (Marshall, C.J.).

Pursuant to the contract clause, Petitioner, Patrick Jay Conely, Citizen pleads to the contract clause the Petitioner cites **New Jersey v Wilson 11 US 164** that The People of the

State of Michigan/The State of Michigan violated the contract clause of the Constitution of the United States which prohibits a state from passing any law impairing the obligation of contracts.

Petitioner argues that the Constitution of the United States is a contract (agreement) between the people of the United States and the government of the United States that was signed and agreed to. **See the Bill of Rights and the Articles.**

The Constitution of the United States declares that no state shall "pass any bill of attainder, ex post factor law, or law impairing the obligation of contracts." Petitioner, Patrick Jay Conely challenges the three Statutes of the State of Michigan on the misapplication and violation of the laws and the Constitution of the United States; First– M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (1), [324.115121], MISDEMEANOR: $1,000.00 fine (see M.C.L. 324.11549); Second – M.C.L. 324.11509 (1); M.S.A. 11509 (1), [324.115091], MISDEMEANOR: $1,000.00 fine [see M.C.L. 324.11549; Third – contrary to M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (2),[324.115122] MISDEMEANOR: $1,000.00 fine [see 324.11549].

Plaintiffs further argue in the case of **Fletcher v Peck, 10 US 87 (1810)**, it was decided in this Court on Solemn argument and much deliberation that his provision of the Constitution extends to contracts to which a state is a party, as

well as to contracts between individuals. The question then is narrowed to the inquiry whether in the case stated, a contract existed and whether that contract is violated by the act of 1804.

QUESTIONS PRESENTED IN PETITIONER'S WRIT OF CERTIORARI

I - Has the State of Michigan meet the burden of proof to control the private property of Patrick Jay Conely?

II – Is Patrick Jay Conely grandfathered in his right to operate a salvage operation?

III – Are the Statutes of the State of Michigan as most defined in Count I, II and III of the criminal complaint taken in the name of The people of the State of Michigan, the State of Michigan ex-post facto to the Constitution of the United States?

IV Was Patrick Jay Conely's Fifth and Fourteenth Amendment Rights violated when The People of the State of Michigan, the State of Michigan failed to apprise Mr. Conely of the statutes defined in Counts I, II and III prior to filing the State of Michigan criminal complaint No. 01-5883 SM.

PARTIES TO THE PROCEEDINGS

Petitioner

This proceeding in the Supreme Court of the United States involves a Petition for Writ of Certiorari to the Michigan Supreme Court.

The party is the Petitioner, Patrick Jay Conely, c/o 4961 Walsh Drive, Brighton, P.O. BOX 361, Michigan, in the United States [48116] (810) 227-1298. Petitioner, Patrick Jay Conely in propia persona.

Under Rule 29 (4) the Solicitor General of the United States of America is served a copy of the petition for Writ of Certiorari, at the Department of Justice, 10th and Constitutional Ave., N.W., Washington in the city of Washington, in the district of Columbia the seat of the government of the United States.

The questions raised by the petitioner, involve questions of the constitutionally and application of the Statutes of the State of Michigan, in the State, in this State referring to The State of Michigan Governmental actions in Michigan and the Constitution and the laws of the United States, Articles and Amendments.

The Solicitor General of the United States was served a copy of the statement by the Supreme Court of the United States that the above entitled action was docked.

RESPONDENTS

The State of Michigan/Michigan is named as the respondent in this action before the Supreme Court of the United States as the moving party in the action in the State of Michigan 53rd. District Court.

The State of Michigan/ Michigan has a regular place of business at the ROMNEY BUILDING, 111 SOUTH CAPITAL AVENUE, LANSING, MICHIGAN.

The Governor of the State of Michigan/Michigan, Jennifer M. Granholn has a regular place of business at the ROMNEY BUILDING, 111 SOUTH CAPITAL AVENUE, LANSING, MICHIGAN.

Respondent, Michael A. Cox, Attorney General for the State of Michigan/ Michigan is the Chief Prosecuting Attorney for the State of Michigan/Michigan, in the State, in this State. Michael A. Cox has a regular place of business at the Law building, 525 Ottawa, Lansing, Michigan state/ State of Michigan.

CONSTITUTIONAL PROVISIONS STATUTES, RULES AND TREATIES INVOLVED

The constitution of the United States, as amended of the original Constitution of 1776, Fifth and Fourteenth amendment of the Bill of Rights of the Congress of the United States of Article the fifth; the Fourteenth Amendment to the Constitution of the United States for the original State of the Union of the United States; Article III § 2 of the Constitution of the United States; Article IV § 1 of the Constitution of the United States;

41 Cong. Rec. 2752; the Buck-Act 4 U.S.C. §§ 105-110.

This Supplemental Brief for the Petitioner is filed in good faith by the petitioner and requests procedural due process pursuant the Fifth and Fourteenth Amendment of the alleged deprivation of liberty and property as most respectfully presented in his writ of certiorari.

In controversy are the Three Statutes of the State of Michigan and the application of these Statutes to Patrick Jay Conely, Citizen, Petitioner in this particular action before this court.

The Petitioner respectfully request the justices of this court to adjudicate the actual dispute between the parties, the petitioner, Patrick Jay Conely and The State of Michigan/Michigan as an actual case in controversy.

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Appendix - D-

Addendum - A -

Addendum - B-

Michigan Statutes Count I M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (1), [324.115121], MISDEMEANOR: $1,000.00 fine (see M.C.L. 324.11549)

Count II M.C.L. 324.11509 (1); M.S.A. 11509 (1), [324.115091], MISDEMEANOR: $1,000.00 fine [see M.C.L. 324.11549

Count III contrary to M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (2),[324.115122] MISDEMEANOR

Now comes Patrick Jay Conely, Citizen, Petitioner and moves by and through his Supplemental Brief pursuant Rule 15 of the Rules of the Supreme Court of the United States and clarifies the questions and issues raised in his petition for writ of certiorari. The court has before it an Article III case and/or controversy. A court properly presented with an issue is not limited to the particular legal theories advanced by the parties, retains the independent power to identify and apply the proper construction of governing law; **Kamen v. Kemper Financial Services, Inc., 500 U.S. 90-99.**

Petitioner raised the following arguments, meritorious defenses and the alleged violations of the positive laws the articles and amendment of the Constitution of the United States as the supreme law of this nation, of which he is a Citizen under the jurisdiction of this court.

At issue are the three statutes of the State of Michigan, enforced in Michigan in the United States on sovereign soil of the United States as a case in conroversy.

The first issue to be considered is jurisdiction and whether the alleged violation occurred in Livingston County, Michigan.

This question was settled by the Order of the Livingston Circuit Court by the Honorable Circuit Judge Daniel A. Burress at the Appendix – D-6 at paragraph 2 "There was no evidence presented at trial relating to November 8, 2001, the date alleged in the Complaint. Nor is there a finding as to the date by the

trial court. The evidence, viewed in a light most favorable to the prosecution, does not support a conviction for the acts occurring November 8, 2001." If petitioner's sufficiency-of-the-evidence is valid, (No evidence presented at trial in the State of Michigan 53rd District Court) retrial is barred pursuant to the **Double Jeopardy Clause,** fifth amendment to the Constitution of the United States. See **Richards v. United States, 144 U.S. 263 (1892) at 144 U.S. 317.**

The court "Accordingly, the decision of the trial court is REVERSED.

Herein attached to this Supplement Brief with the State of Michigan criminal complaint out of the State of Michigan 53rd District Count in the fiction, Legislative creation under the 1963 Constitution without boundaries.

This in itself has failed the test of "prima-facie" evidence required to charge Patrick Jay Conely under **STATE OF MICHIGAN STATUTES**

Count I - - - SOLID WASTE - - - DISPOSAL
OF REFUSE AT NON-LICENSED
FACILITY did dispose of refuse at a place
other that a disposal area licensed under
the Solid Waste Management Part;
contrary to M.C.L. 324.11512 (1);
M.S.A. 13A. 11512 (1), [324.115121],
MISDEMEANOR: $1,000.00 fine
(see M.C.L. 324.11549)

Count II - - - SOLID WASTE - - -

ESTABLISHING A DISPOSAL AREA WITHOUT A PERMIT did establish a disposal area without first obtaining a construction permit from Department of Natural Resources; contrary to M.C.L. 324.11509 (1); M.S.A. 11509 (1), [324.115091], MISDEMEANOR: $1,000.00 fine [see M.C.L. 324.11549

Count III - - - SOLID WASTE - - - OPERATING DISPOSAL AREA WITHOUT LICENSE, did conduct, manage, maintain, or operate a disposal area without having a license from the Department of Natural Resources; contrary to M.C.L. 324.11512 (1); M.S.A. 13A. 11512 (2),[324.115122] MISDEMEANOR: $1,000.00 fine [see 324.11549].

The right of Patrick Jay Conely to conduct his private operation was well established prior to 1995; **see Bunting v. Mellen, 541 U.S. 1019 (2004); Wilson v. Layne, 526 U.S. 603 (1999) at 526 U.S. 606.**

The Petitioner argues that when the State of Michigan was admitted into the union of the United States under the **Doctrine of Equal Footing** the State of Michigan agreed to comply with all existing laws of the United States and the Constitution of the United States.

The Petitioner argues under the principle of contract in this matter the State of Michigan has an obligation to comply

with the laws and the Constitution of the United States admitted into the union upon the **Doctrine of Equal Footing** has an obligation to abide by the existing laws of the United States. Article 1 § 9, Cl.3, exist and therefore the three State of Michigan Statutes are ex post facto to the Constitution of the United States and therefore are repugnant to the Constitution of the United States.

With with his private domicile and private business in Michigan (Territory), Michigan state in the united States as preserved in the Northwest Ordinance 1787 of the Act of Congress, July 13, 1787, of the Enabling Acts of the Act of Congress, June 15, 1836, 5 U.S. Stat. at Large 49, of the Act of Congress, June 23, 1836, 5 U.S. Stat. at Large 59; of the Michigan Ordinance Submitting alternatives, Laws of 1836, p.57, July 25, 1836; of the Michigan Assent to Condition of "Admission; of the Admission of the State, Act of Congress, January 26, 1837, 5 U.S. State. at Large 144; of Chapter VI. - An Act to admit the State of Michigan into the Union, upon an equal footing with the original States; of the present Constitution of the State of Michigan 1963, Effected January 1, 1964, As Amended to April 1, 1985," See **Tiger vs. Western Investment Co. 221 U.S. 286 (1911); Oklahoma Tax Comm'n., vs. United States, 319 U.S. 598 (1943).**

Petitioner, Patrick Jay Conely, pleads claims sovereign immunity as a federal citizen of the united States."

The judicial code and its legislative history cannot be ignored; See **Ex-parte McCardle, 7 Wall, 506 at 512 (1868).** The code (United States Code) cannot prevail over the statutes at Large; See **Stephan v. United States. 319 U.S. 423 at 426**

(1943); also Warner v. Goltra, 293 U.S. 155 at 156 (1934) code was not authorized by congress to amend existing law.

Where as "that being the case" – maritime law belongs to the seamen only and cannot be claimed by the Master of the ship (gold fringed flag in the court room to establish jurisdiction under the flag) immunity to the Citizen only.

The court in the matter of the **United States v. Welden, 377 U.S. 95 (1964) at 122;**

Alan Barth reviewed the nature of the "legislative trial":

"The legislative trial carries with it sanctions of a severe order. It is, to begin with, unimpeded by any [377 U.S. 122] statute of limitations; an error committed in the 1930s may be judged in the 1950s -- and without any allowance whatever for altered conditions or a changed political climate. Defendants may be subjected to double or triple jeopardy, that is, they may be tried by different committees for the same deed. The punishments meted out are uninhibited by any sort of criminal code. Persons convicted in the courts of Congress may not suffer imprisonment, but they are likely to be subjected, in addition to loss of reputation, to a blacklisting which may effectively deny them any means of gaining a livelihood.
Barth goes on to say:"

"The legislative trial serves three distinct though related purposes: (1) it can be used to punish conduct which is not criminal; (2) it can be used to punish supposedly criminal conduct in the absence of evidence requisite to conviction in a court of law; and (3) it can be used to drive or trap persons suspected of "disloyalty" into committing some collateral crime such as perjury or contempt of Congress, which can then be

subjected to punishment through a judicial proceeding."

"Benjamin V. Cohen has shown why the legislative trial has no place in our system:"

"There is no excuse for congressional committees' acting as "people's courts," following totalitarian patterns."

"Legislative trials, since the trial of Socrates, have had an odious history. Legislative trials combine the functions of prosecutor and judge, and deny to the accused the right to impartial and independent judgment. Legislative trials are subject [377 U.S. 123] to the influence of partisanship, passion and prejudice. Legislative trials are political trials. Let us remember that, in the past, legislative justice has tended to degenerate into mob injustice."

"The legislative "trial" is a phenomenon that Senator Cain once described as a committee "running wild," becoming "victims of a wave of emotion which they created, but over which they had no control."

"Some may see wisdom in this modern kind of "trial by committee," so to speak, with committees and prosecutors competing for victims. But the more I see of the awesome power of government to ruin people, to drive them from public life, to brand them forever as undesirable, the deeper I feel that protective measures are needed. I speak now not of constitutional power, but of the manner in which a statute should be read. I therefore incline to construe the Immunity Act freely to hold that he who runs the gantlet of a committee cannot be "tried" again."

Upon information and belief I, Patrick Jay Conely was tried in a Legislative Court of the State of Michigan and convicted of violating the Legislative Statutes of the State of Michigan, of which are not the laws of the United States pursuant to **28 U.S.C. § 1738**; see **Thomas vs. Washington Gas Light Co., 448 U.S. 706 (1999).**

It is obvious that Michigan Compiled Laws are enacted to administer to the employees, police officers or other non-elected bureaucrats that never leave office, in violation of the Constitutions intent that regular elections be held to weed out oppressive bureaucrats that abuse their privileges. "**All the officers of the government, from the highest to the lowest, are *creatures of the law, and are bound to obey it." United States v. Lee; Kaufman v. Lee*, 106 U.S. 196; 1 S. Ct. 240; 27 L. Ed. 171 (1882)** In this case, the Supreme Court affirms that an officer of the government is the artificial "***person***" created and defined in Statutes. By the very act of defining "persons" by statute, it infers that natural free people that created the legislature or other departments are not embraced by the definition of "person", nor subject to the statute.

The rule in federal cases is that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed. **See, e.g., Roe v. Wade, 410 U.S. [113,] 125 [(1973)]; [422 U.S. 402] SEC v. Medical Comm. for Human Rights, 404 U.S. 403 (1972); United States v. Munsingwear, Inc., 340 U.S. 36 (1950).**

The "Legal rule" is to be established at **Anderson v. Creighton, 483 U.S. 635 at 639 (1987)** 14th Amendment violation; also **Mitchell v. Forsyth, 472 U.S. 511 at 528 (1985).**

The exercise of judicial power under Art. III of the Constitution depends on the existence of a case or controversy. As the Court noted in **North Carolina v. Rice, 404 U.S. 244, 246 (1971)**, a federal court has neither the power to render advisory opinions nor "to decide questions that cannot affect the rights of litigants in the case before them." Its judgments must resolve "a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." See **Southern Pacific Terminal Co. v. ICC, 219 U.S. 498 at 515 (1911).**

See **United States v. Lee 106 U.S. 196 (1892)** cited; "It is obvious that in our system of jurisprudence, the principle is as applicable to each of the states as it is to the United States, except in those cases where by the Constitution a state [106 U.S. 207] of the Union may be sued in this Court. **Railroad Co. v. Tennessee, 101 U.S. 337; Railroad Company v. Alabama, 101 U.S. 832.**" To establish jurisdiction. The first recognition of the general doctrine by this Court is to be found in the case of **Cohens v. Virginia, 6 Wheat. 264.**

See – **106 U.S. 220** – "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the our system of government, and every man who by accepting office participates in its functions is only the more strongly

bound to submit to that supremacy and to observe the limitations which it imposes upon the exercise of the authority which it gives." law and are bound to obey it. It is the only supreme power in

The petitioner has meet the burden of invoking federal jurisdiction of this Article III court and has meet the burden of proof and persuasion as to the existence of standing. **Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (hereinafter Lujan); FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990)** of demonstrating injury in fact and continues to stand in harms way with his personal right and Liberty diminished by the Respondents

These averments alone as raised in his petition for writ of certiorari, petitioner has demonstrated that he has suffered a "concrete and particularized" injury, **Lujan, 504 U.S. at 560**, setting forth"specific facts" to support his claims. See,"**Warth v. Seldin, 422 U.S. at 501**, palpable injury and the presence of a genuine injury.

Theses specific facts were "supported adequately the Order of Circuit Judge Daniel A. Burress at petitioner Appendix at D- 6 no evidence adduced at trial,'" ibid. (quoting **Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 115, n. 31 (1979)).** "The affidavits themselves are woefully short on "specific facts," and the vague allegations of injury they do make are undermined by the evidence adduced at trial. To

present, bring forward, offer, introduce. Used particularly with reference to evidence;" No evidence to support the conviction.

"Circuit Judge Daniel A Burress correctly stated No evidence presented at trial relating to November 8, 2001, the date alleged in the Complaint. Not is there a finding as to this date by the trial court."

Petitioner, Patrick Jay Conely, demandant, has a right to place before the (assize (summoned the filing of the petitioner for writ of certiorari) together to try a dispute performing the functions of a jury)) justices of this Supreme Court of the United States all the evidence which Patrick Jay Conely though might tend to establish his right of property and constitutional guarantees under the Constitution and laws of the United States; in view of **Bradstreet v. Thomas, 37 U.S. 12Pet.) 174 (1838)** which the Circuit Court for Livingston ruled upon, No Evidence that it might apply to this court **as the law of the case**, without which it could not do in; The People of the State of Michigan/ The State of Michigan in Error.

This leaves this Honorable court and the justices of the court to decide the actual case in controversy of the three State of Michigan Statutes alleged were misapplied, repugnant to the Constitution and the laws of the United States.

Petitioner alleges a violation of the Sixth Amendment Confrontation Clause provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be

confronted with the witnesses against him." We have held that this bedrock procedural guarantee applies to both federal and state prosecutions" See **Crawford v. Washington 541 U.S. 36 (2004)**. See original understanding of the Clause. See, e.g., **Lilly, 527 U.S. at 140-143 (BREYER, J., concurring); White, 502 U.S. at 366.**

The valuable legal property right and the right of a hearing to apprise petitioner were violated; hearing inter-alib; see **Preiser v. Newkirk,422 U.S. 395 (1975).**

This harms way suffering adverse consequences as a result of the three State of Michigan Statute on soil in Michigan in the sovereign United States.

Petitioner is adversely affected by the State of Michigan Government an trovention "without a chance of redress in the Counts of the State of Michigan. This action is being repeated because of the three Statutes involved of $1,000.00 a day penalty for violation of the statutes, petitioner is entitle to the basic **elements of Rudimentary due-process at 422 U.S. 403.**

See – **United States v. Lee 106 U.S. 196 (1892) at 106 U.S. 220** – "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy and to observe the limitations which it imposes upon the exercise of the authority which it gives."

See **Alden v. Main, 527 U.S. 706 (1999) at 527 U.S. 731** – "This Constitution, and the Laws of the United States

which shall be made in Pursuance thereof . . . , shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."

"**U.S. Const., Art. VI.** It is contended that, by virtue of these provisions, where Congress enacts legislation subjecting the States to suit, the legislation by necessity overrides the sovereign immunity of the States."

See **527 U.S. 706 at 527 U.S. 801** – "Nor can it be argued that, because the State of Maine creates its own court system, it has authority to decide what sorts of claims may be entertained there, and thus, in effect, to control the right of action in this case. Maine has created state courts of general jurisdiction; once it has done so, the Supremacy Clause of the Constitution, **Art. VI, cl. 2,** which requires state courts to enforce federal law and state court judges to be bound by it, requires the Maine courts to entertain this federal cause of action. Maine has advanced no "`valid excuse,'" **Howlett v. Rose, 496 U.S. 356, 369 (1990) (quoting Douglas v. New York, N. H. & H. R. Co., 279 U.S. 377, 387-88 (1929))**, for its courts' refusal to hear federal law claims in which Maine is a defendant, and sovereign immunity cannot be that excuse simply because the State is not sovereign with respect to the subject of the claim against it. The Court's insistence that the federal structure bars Congress from making States susceptible to suit in their own courts is, then, plain mistake."

See Withrow v. Larkin, 421 U.S. 35 (1975) a "fair trial in a fair tribunal is a basic requirement of due process." **In re Murchison, 349 U.S. 133, 136 (1955).**This applies to administrative agencies which adjudicate as well as to courts. **Gibson v. Berryhill, [421 U.S. 47] 411 U.S. 564, 579 (1973).** Not only is a biased decisionmaker constitutionally unacceptable, but "our system of law has always endeavored to prevent even the probability of unfairness." **In re Murchison,**

supra at 136; cf. Tumey v. Ohio, 273 U.S. 510, 532 (1927). "In pursuit of this end, various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. Among these cases are those in which the adjudicator has a pecuniary interest in the outcome, and in which he has been the target of personal abuse or criticism from the party before him. **Withrow v. Larkin, 421 U.S. 35, 47 (1975).**By removing this source of "possible temptation" **for a judge to rule on the basis of self-interest, Tumey, 273 U. S at 532,** the pledges or promises prohibition furthers the State's "compellin[g] interest in maintaining a judiciary fully capable of performing" its appointed task, **Gregory v. Ashcroft, 501 U.S. 452, 501 U.S. 472 (1991)**: "judging [each] particular controversy fairly on the basis of its own circumstances,"**United States v. Morgan, 313 U.S. 409, 421 (1941).** See O'Neil, "**The Canons in the Courts, supra, at 723** ("What is at stake here is no less than the promise of fairness, impartiality, and ultimately of due process for those whose lives and fortunes depend upon judges being selected by means that are not fully subject to the vagaries of American politics.").

See **Republican Party of Minnesota v. White, 536 U.S. 765 (2002).** "[N]o man is permitted to try cases where he has an interest in the outcome." **In re Murchison, 349 U.S. at 136.**

"[T]he requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. **In re Murchison, 349 U.S. at 136** "[T]o perform its high function in the best way[,]`justice must satisfy the appearance of justice.'"

Where as this is the case Patrick Jay Conely request the justices of the Supreme Court of the United States judicata this case in actual controversy.

[T]he decision maker' conclusion as to a recipient's eligibility must rest solely on the legal Rules and evidence at the Hearing. [of] course an impartial decision maker is essential.

Petitioner has truly presented a case and controversy between the parties.

Petitioner, Patrick Jay Conely, Citizen herein incorporates by reference **Addendum - A** - the Constitution of the United States of 1787 and the Preamble relying on the cases referenced in the Addendum and says If grand of power to federal government is found, object of invasion of rights of states under **Ninth and Tenth Amendment** must fall; see **United Public Workers v. Mitchell, 330 U.S. 75, 91 L. Ed. 517 (1947);**

> "The fundamental human rights guaranteed by the First, Fifth, Ninth and Tenth Amendments are not absolute, and this Court must balance the extent of the guarantee of freedom against a congressional enactment to protect a democratic society against the supposed evil of political partisanship by employees of the Government." **Pp. 95-96." Joseph v. United States Civil Service Com., 180 App D.C. 281, 554 F2D. 1140.**

Petitioner, is in position to raise questions as to the application of the three State of Michigan Statutes most defined above in this court of last resort; of the alleged injury I have suffered and threatened enforcement, presenting justiciable issues.

Petitioner wherein incorporates the definitions in support of his argument in **Addendum - B -**.

Whereas this is the case Petitioner respectfully requests this Honorable justices of this court grant an injunction to remove the restraints in violation of the "Commerce Clause" in view of **Re. Debs, 158 U.S. 564 (1895); See Addendum - A -**.

Prayer for Relief

Wherefore, Patrick Jay Conely, Petitioner, respectfully request the justices of this Supreme Court of the United States grant State writ of certiorari to clarify the constitutional rights of the petition without undue delay and undue the actual harm that the respondents in their quest for power and political advantages has disadvantaged Patrick Jay Conely, Petitioner, Citizen in the united States.

Petitioner has presented an actual antagon assertion of the Rights by Patrick Jay Conely, Citizen against the State of Michigan/Michigan.

Wherefore, Petitioner request the justices of the Supreme Court of the United States grant his writ of certiorari to settle this actual case in controversy of the three State of Michigan Statutes in question that are repugnant to the Constitution and the positive laws of the united States.

Wherefore, Petitioner, respectfully requests the Honorable justices of the court grant relief pursuant to Rule 33

(g) (iv) of this court additional pages to explain to the justices of this court the importance of the arguments at issue before this court.

Dated: 6-23-06

Patrick Jay Conely
c/o 4961 Walsh Drive
P.O. BOX 361
Brighton, Michigan [48116]

BEFORE ME, the undersigned authority, Patrick Jay Conely, known by me (or satisfactorily proven) whose full appellation is subscribed by the foregoing instrument, personally appeared and acknowledged by me that he executed the same as his free act and deed for the purpose and considerations herein expressed and the capacity stated and the statements contained herein are true and correct by the best of his information, knowledge, and belief.

Subscribed and affirmed before me this 23rd day of June, 2006.

IN WITNESS WHEREOF, I have set my hand and official seal:

Brent M. Dupay
Notary Public
07/28/2008
My Commission Expire

BRENT M. DUPAY
Notary Public, Wayne County, MI
Acting In Livingston Co., MI
My Commission Expires 07/28/2008

APPENDIX -D -
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF LIVINGSTON

PEOPLE OF THE STATE OF
MICHIGAN,
Plaintiff,

v Case. No. 02-13106 AR

PATRICK JAY CONELY,
Defendant.

TRUE COPY
DANIEL A. BURRESS
44th CIRCUIT COURT

OPINION and ORDER

Defendant/Appellant Conely was charged in a three count Complaint with violating provisions of the Solid Waste Management Act. Count I. alleged that Conely did

dispose of refuse at a place other than a disposal area licensed under the Solid Waste Management Act contrary to MCL 324.11512(1). Count II alleged that Conely established a disposal area without first obtaining a construction permit from the Department of Environmental Quality, contrary TO MCL 324,11509(1). Count III alleged that Conely did conduct, manage, maintain, or operate a disposal area without having- a license from the Department of EnvironmentalQuality contrary to MCL 324.11512(2). The complaint alleged that all three of these violations occurred on November 8, 2001.

Conely waived his right to a jury trial and a bench trial was held on June 25, 2002.Written closing arguments by the parties were presented to the trial court on or before July 16, 2002. The trial court issued an opinion and order finding Conely guilty on all three counts. Conely was sentenced, to fines of five hundred dollars ($500.00) on

each count.

Conely has appealed that conviction and sentence as of right to this Court.

After hearing oral argument on the appeal of this matter on May 28,2003, this Court directed the parties to submit briefs limited to the date of the offense and venue only.

The prosecution argues that the trial court was aware of Defendant's contention that there was no proof regarding the offense date because defense counsel argued it in his written closing argument to the trial court. In support of the prosecution's position. Appellee cites *People v Less,* 197 Mich App 131; 494 NW2d 797 (1992) which states:

> Factual findings are sufficient as long as it appears that the trial court was aware of the issues in the case and correctly applied the law. The court need not make specific findings of fact regarding each element of the crime. A court's failure to find the facts does not require remand where it is manifest that the court was aware of the factual issue, that it resolved the issue, and that further explication would not facilitate appellate review. (Internal

citations omitted.) *Id* 134, 135.

The People also cite *People v Rand,* 397 Mich 638; 247 NW2d 508 (1976), which states that the a written verdict is not void for uncertainty if the Jury's intent can be deduced by reference to the pleadings, court's charge and the entire record.

Defendant contends that the opinion and order of the trial court does not disclose any finding of fact as to the date of the alleged offenses or that the alleged offenses were committed, in Livingston County. Defendant correctly notes that there was no evidence-presented at trial as to Defendant's activities or the condition of his property on or about November 8, 2001, the date alleged in the Complaint.

Defendant further notes that venue is a necessary portion of the prosecution's case, People v Swift, 188 Mich App 619,470 NW2d 491 (1991); and that venue must be proven beyond a reasonable doubt. *People v Plautz,* 28 Mich *App*

621; 184 NW2d 761 (1970).

MCR 6.403 provides:

When trial by jury has been waived., the court with jurisdiction must proceed with the trial. The court must find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions of the record or in a written opinion made a part of the record.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, the evidence presented is reviewed in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella,* 424 Mich 221,268- 270,275; 380 NW2d 11 (1985); *People v Vaughn,* 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The trial court must make findings of fact and state separately its conclusions of law, MCR 6.403. Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People* v *Smith.* 211 Mich App 233, 235; 535 NW2d 248 (1995). The trial court's findings of fact are reviewed for clear error. MCR 2.613(C); *People v Hermiz.* 235 Mich App 248,255; 597 NW2d 21 S (1999), affd 462 Mich.7]; 611 NW2d 783 (2000).

The trail court need not make specific findings as regards each element of the crime to comply with the dictates of MCR 6.403; *Legg, supra.* A trial court's **factual** findings are sufficient as long as it appears that the court was aware of the factual issues and correctly applied the law. *Id.* at 134.

"A finding is considered to be clearly erroneous if, after a review of the entire record, the appellate court is left

with a definite and firm conviction that a mistake has been made." People v Gistover, 189 Mich App 44,46; 472 NW2d 27 (1991). The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

There was no evidence presented at trial relating to November 8, 2001, the date alleged in the Complaint. Nor is there a finding as to this date by the trial court. The evidence, viewed in a light most favorable to the prosecution, does not support a conviction for acts occurring November 8, 2001.

Accordingly, the decision of the trial court is REVERSED.

THIS ORDER RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

Aug. 06, 2003
Date

Daniel A. Burress
Circuit Judge

ADDENDUM - A-

THE DECLARATION OF INDEPENDENCE IN CONGRESS, JULY 4, 1776

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA

"When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposedto suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future

security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former systems of government."

THE CONSTITUTION OF THE UNITED STATES PREAMBLE

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Articles

ARTICLE ONE

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not

be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

Section 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; **pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.**

ARTICLE THREE

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

Trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

ARTICLE FOUR

Section 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Section 3. New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE SIX

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

ARTICLE SEVEN

The ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention by the unanimous consent of the States present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the Independence of the United States of America the twelfth, in witness whereof we have hereunto subscribed our Names,
GEO. WASHINGTON - **President and deputy from Virginia**

New Hampshire
JOHN LANGDON
NICHOLAS GILMAN

Massachusetts
NATHANIEL GORHAM
RUFUS KING

Connecticut
WM SAML JOHNSON
Connecticut
WM SAML JOHNSON
ROGER SHERMAN

New York
ALEXANDER HAMILTON

New Jersey
WIL. LIVINGSTON
DAVID BREARLEY
WM PATERSON
JONA. DAYTON

Pennsylvania
B FRANKLIN
THOMAS MIFFLIN
ROBT MORRIS
GEO CLYMER
THOS FITZSIMONS
JARED INGERSOLL
JAMES WILSON
GOUV. MORRIS

Delaware
GEO READ
GUNNING BEDFORD JUN.
JOHN DICKINSON
RICHARD BASSETT
JACO. BROOM

Maryland
JAMES McHENRY
DAN of ST THO JENIFER
DANL CARROLL

Virginia
JOHN BLAIR
JAMES MADISON JR.

North Carolina
WM BLOUNT
RICHD DOBBS SPAIGHT
HU WILLIAMSON

South Carolina
J. RUTLEDGE
CHARLES COTESWORTH PINCKNEY
CHARLES PINCKNEY
PIERCE BUTLER

Georgia
WILLIAM FEW
ABR BALDWIN
Attest
William Jackson

Amendments

AMENDMENT ONE

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT FOUR

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT FIVE

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

See **Boyd v. United States, 116 U.S. 616 (1886)**

"The 6th section of the act of June 22, 1874, entitled "An act to amend the customs revenue laws," &c., which section authorizes a court of the United States, in revenue cases, on motion of the government attorney, to require the defendant or claimant to produce in court his private books, invoice and papers, or else the allegations of the attorney to be taken as confessed: Held, to be unconstitutional and void a applied to suits for penalties or to establish a forfeiture of the party's goods, as being repugnant to the Fourth and Fifth Amendments of the Constitution."

"Where proceedings were in rem to establish a forfeiture of certain goods alleged to have been fraudulently imported without paying the duties thereon, pursuant to the

12th section of said act: Held, That an order of the court made under said 5th section, requiring the claimants of the goods to produce a certain invoice in court for the inspection of the government attorney, and to be offered in evidence by him, was an unconstitutional exercise of authority, and that the inspection of the invoice by the attorney, and its admission in evidence, were erroneous and unconstitutional proceedings."

"It does not require actual entry upon premises and search for and seizure of papers to constitute an unreasonable search and seizure within the meaning of the Fourth Amendment; a compulsory production of a party's private books and papers to be used against himself or his property in a criminal or penal proceeding, or for a forfeiture, is within the spirit and meaning of the Amendment."

"It is equivalent to a compulsory production of papers to make the nonproduction of them a confession of the allegations which it is pretended they will prove."

"A proceeding to forfeit a person's goods for an offence against the laws, though civil in form, and whether in rem or in personam, is a "criminal case" within the meaning of that part of the Fifth Amendment which declares that no person "shall be compelled, in any criminal case, to be a witness against himself.""

"The seizure or compulsory production of a man's private papers to be used in evidence against him is equivalent to compelling him to be a witness against himself, and, in a prosecution for a crime, penalty or forfeiture, is equally within the prohibition of the Fifth Amendment."

"Both amendments relate to the personal security of the citizen. They nearly run into, and mutually throw light upon, each other. When the thing forbidden in the Fifth Amendment, namely, compelling a man to be a witness against himself, is the object of a search and seizure of his private papers, it is an "unreasonable search and seizure" within the Fourth Amendment." **[116 U.S. 617]**

"Search and seizure of a man' private paper to be used in evidence for the purpose of convicting him of a crime, recovering a penalty, or of forfeiting his property is totally different from the search and seizure of stolen goods, dutiable articles on which the duties have not been paid, and the like, which rightfully belong to the custody of the law."

"The clauses of the Constitution to which it is contended that these laws are repugnant are the Fourth and Fifth Amendments." "The Fourth declares,"

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

"The Fifth Article, amongst other things, declares that no person "shall be compelled in any criminal case to be a witness against himself."" **at 116 U.S. 621.**

"But, in regard to the Fourth Amendment, it is contended that, whatever might have been alleged against the constitutionality of the acts of 1863 and 1867, that of 1874, under which the order in the present case as made, is free from constitutional objection because it does not authorize the search and seizure of books and papers, but only requires the defendant or claimant to produce them. That is so, but it declares that, if he does not produce them, the allegations which it is affirmed they will prove shall be taken as confessed. This is [**116 U.S. 622**] tantamount to compelling their production, for the prosecuting attorney will always be sure to state the evidence expected to be derived from them as strongly as the case will admit of. It is true that certain aggravating incidents of actual search and seizure, such as forcible entry into a man's house and searching amongst his papers, are wanting, and, to this extent, the proceeding under the act of 1874 is a mitigation of that which was authorized by the former acts; but it accomplishes the substantial object of those acts in

forcing from a party evidence against himself. It is our opinion, therefore, that a compulsory production of a man's private papers to establish a criminal charge against him, or to forfeit his property, is within the scope of the Fourth Amendment to the Constitution in all cases in which a search and seizure would be, because it is a material ingredient, and effects the sole object and purpose of search and seizure."

AMENDMENT SIX

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, **and to have the assistance of counsel for his defence.**

AMENDMENT NINE

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT TEN

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT FOURTEEN
July 28, 1868

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United

States and of the State wherein they reside. **No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

"The Constitution of the United States was ordained and established not by the States in their sovereign capacities, but emphatically, as the preamble of the Constitution declares, by "the people of the United States." There can be no doubt that it was competent to the people to invest the general government [14 U.S. 325] with all the powers which they might deem proper and necessary, to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority. As little doubt can there be that the people had a right to prohibit to the States the exercise of any powers which were, in their judgment, incompatible with the objects of the general compact, to make the powers of the State governments, in given cases, subordinate to those of the nation, or to reserve to themselves those sovereign authorities which they might not choose to delegate to either. The Constitution was not, therefore, necessarily carved out of existing State sovereignties, nor a surrender of powers already existing in State institutions, for the powers of the States depend upon their own Constitutions, and the people of every State had the right to modify and restrain them according to their own views of the policy or principle. On the other hand, it is perfectly clear that the sovereign powers vested in the State governments by their respective Constitutions remained unaltered and unimpaired except so far as they were granted to the Government of the United States."

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in

every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." **See Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 1 Wheat. 304 (1816).**

Government of United States is government of the people from whom it emanates; See **M'Culloch v. Maryland, 17 U.S. 316, 4 L. Ed. 579 (1819)** "From these conventions the Constitution derives its whole authority. The government proceeds directly from the people; is "ordained and established" in the name of the people, and is declared to be ordained, in order to form a more perfect union, establish justice, insure domestic tranquillity, and secure [17 U.S. 404] the blessings of liberty to themselves and to their posterity."

"The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of individual States. Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself, and the limitations on power, if expressed in general terms, are naturally and necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself, not of distinct governments framed by different persons and for different purposes." See **Barron v. Mayor & City Council of Baltimore 32 U.S. (7 Pet.) 243, 7 Pet. 243 (1833).**

The Sixth Amendment's Confrontation Clause provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." We have held that this bedrock procedural guarantee applies to both federal and state prosecutions. **Pointer v.**

Texas, 380 U.S. 400, 406 (1965). As noted above, Roberts says that an unavailable witness' out-of-court statement may be admitted so long as it has adequate indicia of reliability -- i.e., falls within a "firmly rooted hearsay exception" or bears "particularized guarantees of trustworthiness." **448 U.S. at 66.**

The First Congress responded by including the Confrontation Clause in the proposal that became the Sixth Amendment.

Id. at 77. "The Framers would be astounded to learn that ex parte testimony could be admitted against a criminal defendant because it was elicited by "neutral" government officers. But even if the court's assessment of the officer's motives was accurate, it says nothing about Sylvia's perception of her situation. Only cross-examination could reveal that." **At 541 U.S. 50.**

"Early state decisions shed light upon the original understanding of the common law right. **State v. Webb, 2 N.C. 103 (1794) (per curiam)**, decided a mere three years after the adoption of the Sixth Amendment, held that depositions could be read against an accused only if they were taken in his presence. Rejecting a broader reading of the English authorities, the court held:"[I]t is a rule of the common law, founded on natural justice, that no man shall be prejudiced by evidence which he had not the liberty to cross-examine."

"The historical record also supports a second proposition: that the Framers would not have allowed admission of testimonial [**541 U.S. 54**] statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant (Patrick Jay Conely was not apprised of the three State of Michigan Statutes challenged and informed of these Statutes before the State of Michigan filed criminal charges against him personally (**violation of the Ex-posto Contract Clause Article 1 § 9, Cl1.**)) had had a prior opportunity for cross-examination. The text of the Sixth Amendment does not suggest any open-ended exceptions from the confrontation requirement to be developed by the courts.

Rather, the "right . . . to be confronted with the witnesses against him," Amdt. 6, is most naturally read as a reference to the right of confrontation at common law, admitting only those exceptions established at the time of the founding. See **Mattox v. United States, 156 U.S. 237, 243 (1895); cf. Houser, 26 Mo. at 433-435.** As the English authorities above reveal, the common law in 1791 conditioned admissibility of an absent witness' examination on unavailability and a prior opportunity to cross-examine. The Sixth Amendment therefore incorporates those limitations. The numerous early state decisions applying the same test confirm that these principles were received as part of the common law in this country." **[541 U.S. 55]**

"Our later cases conform to **Mattox's** holding that prior trial or preliminary hearing, testimony is admissible only if the defendant had an adequate opportunity to cross-examine. See **Mancusi v. Stubbs, 408 U.S. 204, 213-216 (1972); California v. Green, 399 U.S. 149, 165-168 (1970); Pointer v. Texas, 380 U.S. at 406-408; cf. Kirby v. United States, 174 U.S. 47, 55-61 (1899).** Even where the defendant had such an opportunity, we excluded the testimony where the government had not established unavailability of the witness. See **Barber v. Page, 390 U.S. 719, 722-725 (1968); cf. Motes v. United States, 178 U.S. 458, 470-471 (1900).** We similarly excluded accomplice confessions where the defendant had no opportunity to cross-examine. See **Roberts v. Russell, 392 U.S. 293, 294-295 (1968) (per curiam); Bruton v. United States, 391 U.S. 123, 126-128 (1968); Douglas v. Alabama, 380 U.S. 415, 418-420 (1965).** In contrast, we considered reliability factors beyond prior opportunity for cross-examination when the hearsay statement at issue was not testimonial. See **Dutton v. Evans, 400 U.S. at 87-89 (plurality opinion)." [541 U.S. 58]**

"Members of this Court and academics have suggested that we revise our doctrine to reflect more accurately the **original understanding of the Clause. See, e.g., Lilly, 527 U.S. at 140-143 (BREYER, J., concurring); White, 502 U.S. at 366 [541 U.S. 61]** (THOMAS, J., joined by SCALIA, J.,

concurring in part and concurring in judgment); A. Amar, **The Constitution and Criminal Procedure 125-131 (1997);** Friedman, Confrontation: **The Search for Basic Principles, 86 Geo.L.J. 1011 (1998).** They offer two proposals: first, that we apply the Confrontation Clause only to testimonial statements, leaving the remainder to regulation by hearsay law -- thus eliminating the overbreadth referred to above. Second, that we impose an absolute bar to statements that are testimonial, absent a prior opportunity to cross-examine -- thus eliminating the excessive narrowness referred to above."**See Crawford v. Washington, 541 U.S. 36 (2004).**

Constitutional provisions do not change, but their operation extends to new matters, as modes of business and habits of life of people vary with each succeeding generation; See **Re. Debs, 158 U.S.564, 39 L.Ed.1092 (1895) Whereas Patrick Jay Conely reserves the right to petition the government of the United States for an injunction and petition this court that the government of the United States by and through the United States attorney to intervene.**

The court – At – 156 U.S. 570-572

"The bill further set forth that there had become established in the city of Chicago a business conducted under the name of the Union Stock Yards, at which, for many years, immense numbers of livestock from States and Territories beyond the State of Illinois had been received, slaughtered, and converted into food products and distributed to all quarters of the globe, and that all the large centres of population in the United States were in a great degree dependent upon those stockyards for their food supply of that character; that, for the purpose of handling such livestock and the product thereof, the company conducting such business operated certain railroad tracks, and that, in pursuance of the combination and conspiracy aforesaid, the four defendants, officers of the railway union, issued orders directing all the employs handling such railroad tracks to abandon such service."

"To this was added the following:"

"And your orator further alleges that, in pursuance of the like combination and unlawful conspiracy, the said defendants and others combining and conspiring with them for the purpose of still further restraining and preventing the conduct of such business, have, by menaces, threats, and intimidation, prevented the employment of other persons to take the place of the employees quitting the service of said company so operating said Union Stock Yards."

"And your orator further charges that, by reason of said unlawful combination and conspiracy and the acts and doings aforesaid thereunder, the supply of coal and fuel for consumption **[158 U.S. 570]** throughout the different States of the Union and of grain, breadstuffs, vegetables, fruits, meats and other necessaries of life, has been cut off, interrupted, and interfered with, and the market therefor made largely unavailable, and dealers in all of said various products and the consumers thereof have been greatly injured, and trade and commerce therein among the States has been restrained, obstructed, and largely destroyed."

"The bill alleged that the defendants threatened and declared that they would continue to restrain, obstruct, and interfere with interstate commerce, as above set forth, and that they will, if necessary to carry out the said unlawful combination and conspiracy above set forth, tie up and paralyze the operations of every railway in the United States, and the in and industries dependent thereon."

"Following these allegations was a prayer for an injunction." "The bill was verified."

"On presentation of it to the court, an injunction was ordered commanding the defendants and all persons combining and conspiring with them, and all other persons whomsoever, absolutely to desist and refrain from in any way or manner interfering with, hindering, obstructing or stopping any of the business of any of the following named railroads, (specifically naming the various roads named in the bill) as common carriers

of passengers and freight between or among any States of the United States, and from in any way or manner interfering with, hindering, obstructing or stopping any mail trains, express trains or other trains, whether freight or passenger, engaged in interstate commerce, or carrying passengers or freight between or among the States; and from in any manner interfering with, hindering or stopping any trains carrying the mail; and from in any manner interfering with, hindering, obstructing or stopping any engines, cars or rolling stock of any of said companies engaged in interstate commerce, or in connection with the carriage of passengers or freight between or among the States; and from in any manner interfering with, injuring or destroying any of the property of any of said railroads engaged in or for the purpose of, or in connection with, interstate commerce or the carriage of [158 U.S. 571] the mails of the United States or the transportation of passengers or freight between or among the States; and from entering upon the grounds or premises of any of said railroads for the purpose of interfering with, hindering, obstructing, or stopping any of said mail trains, passenger or freight trains engaged in interstate commerce, or in the transportation of passengers or freight between or among the States, or for the purpose of interfering with, injuring, or destroying any of said property so engaged in or used in connection with interstate commerce or the transportation of passengers or property between or among the States; and from injuring or destroying any part of the tracks, roadbed, or road, or permanent structures of said railroads; and from injuring, destroying, or in any way interfering with any of the signals or switches of any of said railroads; and from displacing or extinguishing any of the signals of any of said railroads, and from spiking, locking, or in any manner fastening any of the switches of any of said railroads, and from uncoupling or in any way hampering or obstructing the control by any of said railroads of any of the cars, engines, or parts of trains of any of said railroads engaged in interstate commerce or in the transportation of passengers or freight between or among the

States, or engaged in carrying any of the mails of the United States; and from compelling or inducing or attempting to compel or induce, by threats, intimidation, persuasion, force, or violence, any of the employs of any of said railroads to refuse or fail to perform any of their duties as employees of any of said railroads in connection with the interstate business or commerce of such railroads or the carriage of the United States mail by such railroads, or the transportation of passengers or property between or among the States; and from compelling or inducing or attempting to compel or induce by threats, intimidation, force, or violence any of the employees of any said railroads who are employed by such railroads, and engaged in its service in the conduct of interstate business or in the operation of any of its trains carrying the mail of the United States, or doing interstate business, or the transportation of passengers and freight between and among the States, **[158 U.S. 572]** to leave the service of such railroads; and from preventing any person whatever, by threats, intimidation, force, or violence from entering the service of any of said railroads and doing the work thereof, in the carrying of the mails of the United States or the transportation of passengers and freight between or among the States; and from doing any act whatever in furtherance of any conspiracy or combination to restrain either of said railroad companies or receivers in the free and unhindered control and handling of interstate commerce over the lines of said railroads, and of transportation of persons and freight between and among the States; and from ordering, directing, aiding, assisting, or abetting in any manner whatever any person or persons to commit any or either of the acts aforesaid."

"And it is further ordered that the aforesaid injunction and writ of injunction shall be in force and binding upon such of said defendants as are named in said bill from and after the service upon them severally of said writ by delivering to them severally a copy of said writ or by reading the same to them and the service upon them respectively of the writ of subpoena herein, and shall be binding upon said defendants, whose names

are alleged to be unknown, from and after the service of such writ upon them respectively by the reading of the same to them or by the publication thereof by posting or printing, and after service of subpoena upon any of said defendants named herein shall be binding upon said defendants and upon all other persons whatsoever who are not named herein from and after the time when they shall severally have knowledge of the entry of such order and the existence of said injunction."

The court at 158 U.S. 578 – First. "What are the relations of the general government to interstate commerce and the transportation of the mails? They are those of direct supervision, control, and management. While, under the dual system which prevails with us, the powers of government are distributed between the State and the Nation, and while the latter is properly styled a government of enumerated powers, yet within the limits of such enumeration, it has all the attributes of sovereignty, and, in the exercise of those enumerated powers, acts directly upon the citizen, and not through the intermediate agency of the State."

"The government of the Union, then, is, emphatically and truly a government of the people. In form and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."

"No trace is to be found in the Constitution of an intention to create a dependence of the government of the Union on those of the States for the execution of the great powers assigned to it. Its means are adequate to its ends, and on those means alone was it expected to rely for the accomplishment of its ends. To impose on it the necessity of resorting to means which it cannot control, which another government may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependence on other governments which might disappoint its most important designs and is incompatible with the language of the Constitution."

Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat. 316, 405, 424.

"Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a national government, acting, with ample power, directly upon the citizens, instead of the confederate government, which acted with powers, greatly restricted, only upon the States."

Chief Justice Chase in Lane County v. Oregon, 7 Wall. 71, 76.

"We hold it to be an incontrovertible principle that the government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to [158 U.S. 579] it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent."

"This power to enforce its laws and to execute its functions in all places does not derogate from the power of the State to execute its laws at the same time and in the same places. The one does not exclude the other, except where both cannot be executed at the same time. In that case, the words of the Constitution itself show which is to yield." ""**This Constitution, and all laws which shall be made in pursuance thereof, shall be the supreme law of the land.**""

Mr. Justice Bradley in Ex parte Siebold, 100 U.S. 371, 395. See also Schooner Exchange v. McFadden, 7 Cranch 116, 136; Cohens v. Virginia, 6 Wheat. 264, 413; Legal Tender Cases, 12 Wall. 457, GO>555; Tennessee v. Davis, 100 U.S. 57; The Chinese Exclusion Case, 130 U.S. 581; In re Neagle, 135 U.S. 1; Logan v. United States, 144 U.S. 263; Fong Yue Ting v. United States, 149 U.S. 698; In re Quarles, ante, 532.

"Among the powers expressly given to the national government are the control of interstate commerce and the creation and management of a post office system for the nation. **Article I, section 8, of the Constitution** provides that the Congress shall have power . . . Third, to regulate commerce

with foreign nations and among the several States, and with the Indian tribes. . . . Seventh, to establish post offices and post roads."

In the Constitutional Construction and Interpretation, - - Principle of existing Law - - The Best and effect of many of the provisions of the Constitution are best ascertained by bearing in mind what the law was at the time the Constitution and Amendments thereof were adopted and ratified, Ex parte, Wilson, 1885, 5 Ct. 935, 114 U.S. 422, 29 L.Ed. 89, not as reaching out for new guaranties but as securing such as the law recognized, **Mattox vs. U.S., 15 S. Ct. 337, 156 U.S. 243, 30 L.Ed. 409, (1805 Kan.).** The requirement of full faith and credit is to be read and interpreted in the light of well established principles of justice protected by the Constitutional provisions which it was never intended to modify or override, **Bigelow vs. Old Diminion Copper Min., etc., Co., 32 S.Ct. 641, 225 U.S. 111, 56 L. Ed.1009, (Mass, 1912).**

In general - - - The Constitution, establishing a frame of government, declaring fundamental principles, and creating a national sovereignty, is not to be interpreted with the strictness of a code of laws or of a private contract, **Fairbanks vs. U.S. , 21 S.Ct. 648, 181 U.S. 287, 45 L.ed. 709, (Minn. 1901).** Provisions for the Protection of Life, Liberty, and Property - - - The provisions for the protection of life, liberty, and property are to be largely and liberally construed in the favor of the Citizen. **Dorman vs. State , 34 Ala. 216, 283, (1850),** a life construction should be made in favor of persons charged with a crime. **See Ex parte, Lange, 85 U.S. 163 , 18 Wall, 163, 21 l.Ed. 872, (1873).**

ADDENDUM - B -

In criminal law. A charge, **preferred before a magistrate having jurisdiction**, that a person named (or an unknown person) has committed a specified offense, with an offer to prove the fact, to the end that a prosecution may be instituted. It is a technical term, **descriptive of proceedings before a magistrate. Hobbs v. Hill, 157 Mass. 556, 32 N. E. 862; Com. v. Davis, 11 Pick. (Mass.) 436; U. S. v. Collins (D. C.) 79 Fed. 66; State v. Dodge Co., 20 Neb. 595, 31 N. W. 117.**

Competent authority. As applied to courts and public officers, this term **imports jurisdiction and due legal authority** to deal with the particular matter in question. **Mitchel v. U. S., 9 Pet 735, 9 L. Ed. 283; Charles v. Charles, 41 Minn. 201, 42 N. W. 935.**

Competent evidence. That which the very nature of the thing to be proven requires, as the production of a writing where its contents are the subject of inquiry. **1 Greenl. Ev. § 2; Chapman v. McAdams, 1 Lea (Tenn.) 500; Horbach v. State, 43 Tex. 242; Porter v. Valentine, 18 Misc. Rep. 213, 41 N. Y. Supp. 507.**

Competent -witness. One who is legally qualified to be heard to testify in a cause. **Hogan v. Sherman, 5 Mich. 60; People v. Compton, 123 Cal. 403, 56 Pac. 44; Com. v. Mullen, 97 Mass. 545.**

See COMPETENCY. *Party as witness: Affidavit for examination.* *'The office of an affidavit, made by one party to a suit, for the purpose of taking the testimony of the other, is to point out the fact to be proved, and not the evidence of that fact. Within the range of the affidavit, the party is to be examined like any other witness, and it is as competent for him to prove a fact by the admissible declarations of others, as it is for any other witness.

COMPETENCY. In the law of evidence. The presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of justice. The term is also applied, in the same sense, to documents or other written evidence.

SWORN, *pp. of swear.* The officers of government are sworn to a faithful discharge of their duty. - American Dictionary of the English Language, Noah Webster, 1828.

sworn.

See **duly sworn; legally sworn; mainsworn; swear.**

- Ballentine's Law Dictionary with Pronunciations, Third Edition, 1969.

swear. To put a person under oath, that is, to administer an oath. To take an oath, that is, to put one's self under oath. To take God's name in vain; to curse.

"As the word is used in the law of perjury, to swear means to state a fact or facts under the sanctity of an oath or affirmation administered by some duly qualified officer having authority to administer the oath in the particular proceeding or investigation in which the statement of the **affiant** is to be made." **State v Dallagiovanna, 69 Wash 84, 124 P 209.**